

AG FINANCIAL REGULATION UPDATE: PERSONAL LOANS, CREDIT CARDS, OVERDRAFTS AND SPECIALIST FINANCE PRODUCTS

1. COVID-19 PAYMENT DEFERRALS

In light of the exceptional circumstances of COVID-19, the FCA have published a number of guidance papers and feedback statements covering large parts of the UK lending market, including guidance applicable to providers of the following lending products:

- Personal loans (published on 9 April 2020 and came into force on 14 April 2020¹);
- Credit cards and retail revolving credit loans (published on 9 April 2020 and came into force on 14 April 2020²);
- High cost short term credit (published on 24 April 2020 and came into force on 27 April 2020³);
- Right-to-own (**RTO**), Buy-now pay-later (**BNPL**) and Pawnbroking agreements (published 24 April 2020 and came into force on 27 April 2020⁴); and
- Motor finance (published on 24 April 2020 and came into force on 27 April 2020⁵).

Common to all guidance is that firms should provide relevant customers with a temporary payment deferral during the current COVID-19 crisis. We have set out below a high level summary of the key elements of the guidance. Much of the guidance is the same for each of the lending products set out above, but where there are important differences we have called those out specifically. Importantly the guidance means that firms are facing significant regulatory challenges implementing the required payment deferrals for customers in a manner which complies with the complex regulatory requirements of the Consumer Credit Act 1974 (**CCA**). We have addressed this in more detail towards the end of this note.

SCOPE OF THE PERSONAL LOAN GUIDANCE

The guidance applies to regulated firms that issue personal loans through regulated credit agreements to customers. It also applies to regulated or unregulated firms that have acquired any of those loans. It does not apply to business loans.

¹ <https://www.fca.org.uk/publications/finalised-guidance/personal-loans-coronavirus-temporary-guidance-firms>

² <https://www.fca.org.uk/publications/finalised-guidance/credit-cards-retail-revolving-credit-coronavirus-temporary-guidance-firms>

³ <https://www.fca.org.uk/publications/finalised-guidance/high-cost-short-term-credit-and-coronavirus-temporary-guidance-firms>

⁴ <https://www.fca.org.uk/publications/finalised-guidance/rent-own-buy-now-pay-later-and-pawnbroking-agreements-and-coronavirus-temporary-guidance-firms>

⁵ <https://www.fca.org.uk/publications/finalised-guidance/motor-finance-agreements-and-coronavirus-temporary-guidance-firms>

SCOPE OF THE CREDIT CARD AND RETAIL REVOLVING CREDIT GUIDANCE

The guidance applies to regulated firms that issue credit cards and retail revolving credit loan products (including store card issuers and catalogue lenders) to customers. It also applies to regulated or unregulated firms that acquire such loans. The guidance does not apply to business credit cards.

SCOPE OF THE HIGH COST SHORT TERM CREDIT GUIDANCE

The guidance applies to regulated firms that enter into high cost short term credit loans (including payday loans) and any regulated or unregulated firms that acquire such loans.

SCOPE OF THE RTO, BNPL AND PAWNBROKING AGREEMENTS GUIDANCE

This guidance applies to regulated firms that enter into right to own, buy-now pay-later or pawnbroking agreements (as defined in the FCA handbook) and regulated or unregulated firms that acquire such loans. It does not apply to peer to peer agreements.

SCOPE OF THE MOTOR FINANCE GUIDANCE

The guidance applies to regulated firms that issue regulated motor finance agreements and any regulated or unregulated firms that acquire such agreements. This includes:

- Hire purchase agreements including personal contract purchase agreements (**PCP**)
- Personal contract hire (**PHC**) agreements
- Conditional sale agreements

The guidance does not apply to agreements where credit is provided for the supply of goods other than motor vehicles (separate FCA guidance may apply). The guidance also does not apply to any agreements that are provided purely for a business purpose.

HOW TO INTERPRET THE PAYMENT DEFERRAL GUIDANCE

A 'payment deferral' is an arrangement under which a firm permits a customer to make no payments (or a token payment not exceeding £1 where a firm's system will not allow a zero sum payment) for a specified period under their agreement without being considered to be in arrears.

ISSUE	EXPECTATION
When should a firm provide a customer with a payment deferral?	General
	Where a customer is experiencing or could reasonably expect to experience payment difficulties due to circumstances arising out of COVID-19 and wishes to receive a payment deferral, a firm should grant a payment deferral of <u>three months</u> unless the firm reasonably determines that it is obviously not in the customer's interests to do so.
	An example of situation in which a payment deferral may be appropriate is where there is or will be a temporary reduction in household income that would have otherwise been used to make loan payments.
What other measures should a firm provide to a customer when granting a payment deferral?	A customer may be granted a 3 month payment deferral beginning at any point in which the guidance remains in force.
	High Cost Short Term Credit
	In the case of high cost short term credit customers, a customer in the circumstances set out above, should be granted a <u>one month</u> payment deferral so that the customer's contractual payment date is deferred until at least the next month's due date.
	Credit Card and Retail Revolving Loan Agreements
	Where firms use indulgences or waivers to give customers a payment deferral, the FCA expects firms to also give those customers indulgences or waivers in relation to, for example, any fees and charges that may arise as a result of non-payment under the contract during the payment deferral.

ISSUE	EXPECTATION
	<p>Pawnbroking Agreements</p> <p>Where a customer remains within a redemption period and has been granted a 3 month payment deferral, the applicable redemption period should be extended by a corresponding 3 month period. If the redemption period has expired, a firm is expected not to serve a notice of intention to sell an item for the length of the payment deferral. If a notice of intention to sell has already been served a firm should postpone any action</p> <p>BNPL Agreements</p> <p>Where a customer is granted a payment deferral and is within the promotional period the firm should extend the promotional period for 3 months. If a balance is not subject to a promotional period and is under a retail running-account product, the credit card and retail revolving credit guidance applies. If a balance is not subject to a promotional period and is under a fixed sum loan agreement then the RTO, BNPL and Pawnbroking agreement guidance applies.</p> <p>RTO Agreements</p> <p>A firm should consider the impact on warranties or insurance sold or otherwise arranged for the customer by the firm and should take steps which are at least as favourable as those that would be taken when applying existing forbearance rules i.e. by allowing customers to continue to be able to rely on insurance and warranties during the payment deferral period or extended length of the loan.</p> <p>In the event this is not possible or a customer has arranged their own policies, firms should make customers aware of the implications.</p>
Do firms need to proactively offer payment deferrals to all customers?	<p>General</p> <p>No, firms do not need to be proactively offering a payment deferral to all customers. Firms should however, be making clear in their communications with customers and through their website that payment deferrals are available in certain circumstances.</p> <p>Firms also need to ensure that their staff are able to identify where a customer has suggested that they are or could reasonably be expected to experience payment difficulties as a result of circumstances relating to COVID-19. Firms should then proactively offer such customers a payment deferral if applicable.</p> <p>High Cost Short Term Credit</p> <p>Firms should make customers aware of the availability of payment deferrals on their website and when contacting customers about missed payments if their payment difficulties relate to circumstances relating to COVID-19.</p> <p>RTO, BNPL and Pawnbroking Agreements</p> <p>Firms should make customers aware of the availability of payment deferrals on their website and when: (i) contacting them about missed payments if their payment difficulties relate to circumstances relating to COVID-19; and (ii) sending out other communications during this period, such as where a pawnbroker issues a notice of intention to sell an item taken in pawn or where BNPL firms send a notice under CONC 6.7.16A R where a customer is approaching the end of the promotional period.</p>
Does a firm need to investigate or confirm the customer's current circumstances before granting the payment deferral?	<p>General</p> <p>No firms do not need to undertake an assessment of each individual customer. Instead firms may carry out an assessment at a book or segregated cohort level.</p> <p>High Cost Short Term Credit</p> <p>The FCA expects firms to engage with customers to understand the likelihood of their being able to resume payments at the end of the deferral period. Where firms do not take reasonable steps to engage with their customers individually, this should not</p>

ISSUE	EXPECTATION
	result in the customer being worse off. In these circumstances, the firm should provide a payment deferral, in line with the guidance until it has taken such steps.
If firms are not expected to undertake an assessment at individual customer level, how are firms expected to comply with their regulatory obligations on refinancing contained within CONC 6.7?	<p>The FCA have published a series of statutory instruments which temporarily amend the existing CONC definition of 'refinance' and dis-apply CONC 6.7.18R, CONC 6.7.19R, 6.7.21G and CONC 6.7.23R as applicable.</p> <p>The statutory instruments are:</p> <ul style="list-style-type: none"> • The COVID-19 Credit Card Statement 2020; and • The COVID-19 Motor Finance & High Cost Credit Instrument 2020.
What if a customer is already experiencing payment difficulties but nevertheless experiences further difficulties due to COVID-19?	Firms should continue to support customers in accordance with the existing forbearance rules and guidance included in CONC.
What information should firms give customers on their payment deferral?	<p>General</p> <p>It is important that customers are given adequate information to understand the implications of a payment deferral including the consequences of interest that is accrued during the payment deferral period and its effect on the balance due under the agreement and on future payments.</p> <p>Above all, all communications must be fair, accurate and not misleading.</p> <p>Motor Finance</p> <p>Firms may want to consider making customers aware of their voluntary termination rights.</p> <p>High Cost Short Term Credit</p> <p>Firms should be mindful of their obligations to provide a customer with an information sheet, where this is required, pursuant to CONC 6.7.20R.</p>
What happens at the end of the payment deferral period?	<p>General</p> <p>Typically at the end of a payment deferral, the customer's payments should resume, with an uplift in either the overall monthly payment or an extended term, where applicable.</p> <p>Where a customer is unable to resume payments having been granted a payment deferral for a COVID-19 related support measure and is entitled to forbearance, a firm must waive any interest accumulated during what would have been the three month payment deferral period.</p> <p>RTO, BNPL and Pawnbroking Agreements</p> <p>Firms should allow customers to repay any amount that has accrued during the payment deferral period in such amounts and over such period as the customer can reasonably afford to pay.</p> <p>This may include allowing the customer to make either a single payment or a series of monthly payments beyond the original term of the agreement.</p> <p>High Cost Short Term Credit</p> <p>In addition to the above, where a firm has engaged with a customer during their one month payment deferral period and determined that such a customer will continue to suffer payment difficulties as a result of COVID-19, the firm should apply the support measures set out in CONC 7.3.5 regardless of whether or not the customer is at that point in default or arrears. Firms should also comply with the other provisions of CONC 7.3 including in particular CONC 7.3.10R;</p> <p>Where a customer has been able to resume making payments under their agreement following a payment deferral, a firm should allow customers to repay any amount that</p>

ISSUE	EXPECTATION
	<p>has accrued during the payment deferral period in such amounts and over such period as the customer can reasonably afford to pay. This may include allowing the customer to make either a single payment or a series of monthly payments beyond the original term of the agreement. The COVID-19 Motor Finance & High Cost Credit Instrument 2020 (referred to above) dis-applies CONC 6.7.23R in this respect.</p> <hr/> <p>Credit Cards and Retail Revolving Credit Agreements</p> <hr/> <p>Firms should consider the implementation of safeguards to help customers at the end of the payment deferral period in the event of a sudden increase in their minimum payments.</p>
How will firms continue to satisfy notice requirements under the Consumer Credit Act 1974?	<p>Where a firm is required to send a statutory notice or statement to a customer under existing legislation or rules such as Notices of Sums in Arrears, firms should continue to provide such communications but they may include suitable explanations or context if they consider it would otherwise lead to confusion for the customer. This would apply where the payment deferral is implemented by way of a forbearance or waiver rather than by way of a variation to the underlying contractual terms.</p>
Can firms require a customer to pay any fees or charges in connection with permitting the payment deferral?	<p>General</p> <hr/> <p>No</p> <hr/> <p>Motor Finance</p> <hr/> <p>It is permissible to add a charge only where interest continues to accrue at the contractual rate but for operational reasons the firm levies this as a charge.</p>
Can a firm continue to charge interest during the payment deferral period?	<p>General</p> <hr/> <p>Firms are permitted to continue to charge interest during the payment deferral period. However, firms will be required to waive any interest charged during the payment deferral period if a customer becomes entitled to forbearance under existing FCA rules at the end of the payment deferral period.</p> <p>Firms should also be mindful that the rate of interest that will continue to accrue during a payment deferral is one of the factors that needs to be taken into account when determining whether the grant of a payment deferral will obviously not be in a customer's interest. A payment deferral will only be appropriate where the effect on the debt burden of the customer is less than the debt burden which would have arose had other forbearance measures been taken.</p> <hr/> <p>RTO Agreements</p> <hr/> <p>In addition to the above, where a firm is required to waive interest accrued during the payment deferral period as a result of a customer becoming entitled to forbearance at the end of the payment deferral period, there should be no impact on the firm's calculation of the total cost of the agreement for the purpose of the Total Cost Cap in CONC 5B.2.11R.</p> <hr/> <p>High Cost Short Term Credit</p> <hr/> <p>Firms provide high cost short term credit are not permitted to charge interest during the payment deferral period. No additional amounts should be added to the customer's existing outstanding balance as a result of the grant of a payment deferral.</p> <p>A payment deferral should have no impact on the firm's calculation of the total cost of the agreement for the purpose of the Total Cost Cap in CONC 5A.2.2R.</p>

ISSUE	EXPECTATION
Is there a requirement for firms to review their interest rates in response to COVID-19?	<p>General</p> <p>There is currently no specific FCA guidance obliging firms to review their pricing structures however, firms should be mindful of their regulatory obligations to treat customers fairly under PRINC 6.</p> <p>Credit Cards and Retail Revolving Credit Agreements</p> <p>The guidance states that firms that provide credit cards should review their interest rates in light of the current COVID-19 circumstances to ensure that the rates offered do not pose an unjustifiable burden for customers who may be experiencing temporary payment difficulties.</p>
How will this impact credit reporting to credit reference agencies (CRAs)?	<p>There should be no negative impact on the customer's credit file because of the grant of a payment deferral and firms should not report a worsening arrears status on the customer's credit file during the payment deferral period.</p> <p>However, where a customer is afforded forbearance under existing CONC rules, firms should continue to report this on the customer's credit file in the usual manner.</p>
Can a firm implement other forbearance measures?	<p>The guidance does not prevent firms from providing more favourable forms of assistance to the customer, such as reducing or waiving interest where it is deemed appropriate to do so.</p>
Where a firm varies an agreement to implement a payment deferral are there restrictions on amending other parts of the agreement?	<p>Credit Cards and Retail Revolving Credit Agreements</p> <p>Firms need to carefully assess their options when considering how to vary a customer's payment terms in light of the various provisions of the CCA and CONC (set out towards the end of this note).</p> <p>The COVID-19 Credit Card Statement 2020 (referred to above) however, temporarily dis-applies the minimum payment rule set out in CONC 6.7.5R.</p> <p>Motor Finance</p> <p>When granting payment deferrals firms may decide to enter into a new agreement with the customer to vary a Personal Contract Purchase (PCP) or Personal Contract Hire (PCH) agreement. Firms should not modify or seek to unilaterally vary the original agreement in a way that takes advantage of the customer's necessity, lack of experience or weaker bargaining position or otherwise leads to unfair outcomes.</p> <p>For example, firms should not recalculate the Guaranteed Minimum Future Value or Residual Value (as the case may be) under a PCP or PCH agreement to try to recover more of the original value through periodic payments where market conditions are temporarily depressed.</p> <p>Firms should be mindful of the unfair relationship provisions under the Consumer Credit Act 1974.</p>
In the context of PCP agreements, what action should firms take where an agreement comes to an end while the guidance is in force?	<p>Motor Finance</p> <p>Where a customer wants to keep the vehicle but can't afford the balloon payment due to COVID-19 related financial difficulties, firms should work with the customer to find an appropriate solution. The guidance specifically states that firms should wherever possible consider solutions that enable a customer to keep the vehicle (if that is their wish), ensuring they can afford any monthly payments and retaining contractual rights such as voluntary termination.</p> <p>The guidance is not clear on what an appropriate solution would be but we would anticipate that an example could be allowing the customer to pay the balloon payment in instalments with no added interest as a form of forbearance.</p>

ISSUE	EXPECTATION
In the context of motor finance, can firms terminate the agreement or repossess vehicles?	<p>Motor Finance</p> <p>Firms should not take steps to terminate the agreement or seek to repossess the vehicle where a customer is experiencing payment difficulties arising out of COVID-19 and requires use of the vehicle unless there are exceptional circumstances such as a customer expressly requesting repossession.</p> <p>Firms are reminded again in this section of the guidance to have regard to the CCA unfair relationship provisions.</p>
Do the 'persistent debt' rules in CONC 6.7 still apply to firms where customers have been granted a payment deferral?	<p>Credit Cards and Retail Revolving Credit Agreements</p> <p>The COVID-19 Credit Card Statement 2020 (referred to above) dis-applies the persistent debt rules in CONC 6.7.27R to 6.7.40G for a temporary period where a customer has been granted a payment deferral. Upon the expiry of a customer's payment deferral firms will need to continue to monitor their customer's overall debt position.</p>
Can firms suspend a credit card or credit facility?	<p>Credit Cards and Retail Revolving Credit Agreements</p> <p>The guidance states that a firm should not suspend a credit card or credit facility where a customer has been granted a payment deferral except where a firm is complying with the provisions of section 98A of the CCA such as in the case of fraud.</p>
Are firms entitled to commence or continue action to redeem / collect / repossess goods (where applicable)?	<p>RTO, BNPL and Pawnbroking Agreements</p> <p>Firms should continue to follow the Government's advice on social distancing and self-isolation. In the event that this means collection of goods is not possible due to no fault of the customer, then no charges or fees should be charged.</p> <p>Where a customer is experiencing temporary difficulties related to coronavirus and needs the goods all repossession action should be postponed or suspended unless there are exceptional circumstances, such as an express customer request.</p> <p>Firms should also ensure that customers are appropriately warned if stores are closed and should not charge any interest or charges where customers cannot make payments because of a store closure.</p> <p>Motor Finance</p> <p>All repossession actions should be postponed or suspended where a customer has the right to use of a vehicle and is experiencing payment difficulties as a result of COVID-19 unless there are exceptional circumstances, such as an express customer request.</p> <p>Firms should have regard to the unfair relationship provisions contained in section 140A of the CCA which can be established by the way a firm exercises or enforces its rights.</p>

2. COVID-19 OVERDRAFTS AND INTEREST RATE BUFFERS

In addition to the above support measures, the FCA also released a guidance paper on 19 April 2020 intended to provide financial support to retail customers that make use of an overdraft facility on their current account⁶. The guidance came in to force on 14 April 2020 and sets out two methods of support.

The first is directed only at customers who fall within the bracket of individuals likely to suffer difficulties with their finances as a result of COVID-19 and concerns a restriction on charging interest on the first £500 of any arranged overdraft, "an interest rate buffer", when requested by a customer

The second is pre-emptive and aimed at overdraft customers more generally. It deals with certain changes many firms have or plan to make to their overdraft charging structures following the FCA's High-Cost Credit Review.

⁶ <https://www.fca.org.uk/publications/finalised-guidance/overdrafts-coronavirus-temporary-guidance-firms>

SCOPE OF THE OVERDRAFT GUIDANCE

The guidance applies to firms that have permission to accept deposits in the UK and which provide current accounts with an overdraft facility to customers. The guidance also applies to EEA authorised firms who currently passport into the UK and provide such services. The guidance does not apply to private banks, credit unions or customers who have a basic bank account.

Below, we set out a high level summary of the guidance including what measures firms will need to take and the practical difficulties firms may encounter when implementing the guidance.

MEASURE ONE: INTEREST WAIVERS

Issue	Expectation
What support do firms need to provide to customers likely to suffer difficulties with their finances as a result of COVID-19?	<p>The guidance states that where a firm provides an arranged overdraft to a customer and the customer has difficulties with their finances, or reasonably expects to have difficulties with their finances due to the impacts of COVID-19, firms should, <u>at the customer's request</u>, grant the customer an interest free buffer and not charge any amount of interest on the first £500 balance on any arranged overdraft for a set 3 month period.</p> <p>The 3 month interest free buffer should be implemented irrespective of whether the balance owed by the customer is higher or lower than £500 and should be granted (when applicable) at any point during which the guidance remains in force.</p>
Are firms required to grant an interest free buffer to all customers with an overdraft facility?	<p>No, firms are only required to grant a customer an interest rate buffer at the customer's request where the customer has indicated that they may encounter difficulties with their finances due to COVID-19.</p> <p>However, the guidance makes clear that firms are permitted to implement the guidance in respect of <u>all customers</u> if they wish by providing an interest free buffer on the first £500 of interest on <u>all Primary Personal Current Accounts*</u> for a fixed 3 month period running from 14 April 2020.</p> <p>*A Primary Personal Current Account is the account into which a customer would usually receive their main source of income (including salary, wages or pension payments).</p>
Are firms required to proactively contact customers to advise them of the potential availability of an interest free buffer?	<p>No, there is no requirement for firms to specifically contact any customer to advise them of the availability of an interest free buffer on the balance on their overdraft.</p> <p>Firms are instead expected to make clear in their communications with customers that interest free buffers are available in the circumstances set out above (including on a firm's website).</p> <p>Firms are also expected to proactively advise a customer of the availability of an interest free buffer if, during an interaction with a customer, a customer provides information which indicates they may encounter difficulties with their finances due to COVID-19.</p>
Are firms required to carry out a creditworthiness assessment when granting an interest buffer?	<p>No, firms will not be expected to carry out a creditworthiness assessment when providing an interest free buffer on the first £500 owed under an arranged overdraft.</p>
What about the impact on new and existing customers wishing to agree either a new or an increased overdraft facility?	<p>Customers may apply for new or increased overdraft facilities in the usual manner.</p> <p>However, in the event that a new customer or an existing customer later encounters financial difficulties as a result of COVID-19, firms should apply the support measures set out in this overdraft guidance. New and existing</p>

	customers should receive equal treatment in terms of the support provided by firms.
Are firms required to carry out a creditworthiness assessment when granting new or increased overdrafts?	<p>Where a firm is considering providing a new overdraft facility or an increased overdraft facility the usual creditworthiness assessment should be carried out under CONC 5.2A.4R.</p> <p>The FCA have confirmed that when carrying out a creditworthiness assessment firms may look beyond a customer's current stressed circumstances and use historical financial information if it is reasonable to expect that the customer's financial position will improve in the future. This is likely to apply in circumstances where a customer is experiencing a temporary reduction in pay which is not expected to become permanent.</p>
How should firms report on the grant of interest free buffers and increased overdraft facilities?	Firms should continue to report on customer's access to, and use of, an overdraft facility in the usual way.
Can firms provide other methods of support?	The guidance does not prevent firms from providing customers with additional support beyond an interest free buffer on the first £500 of any arranged overdraft, however such additional support must be provided in compliance with the usual creditworthiness provisions contained in CONC 5.2A.4R

MEASURE 2 – OVERDRAFT INTEREST RATE PRICING

The guidance makes clear that where firms have increased their overdraft prices or plan to do so as a result of the rules set out in PS19/16 following the FCA's High-Cost Credit Review⁷, firms are expected to review such changes on an initial 3 month basis to ensure that any change in overdraft charging structure is consistent with the obligation to treat customers fairly in light of the exceptional circumstances arising out of COVID-19.

In particular, the FCA expect firms to ensure that any change in charging structure does not put any customer in a worse position than they would have been prior to any change. Firms have flexibility in how they achieve this but the following are examples of best practice:

- A postponement to any increase in charging structures
- A reduction in the firm's published interest rates
- A manual adjustment for customers

Following the end of the three-month period, firms should consider whether customers who have benefitted from the reduction in charging structures are in financial difficulty. If they are, then the lender should provide forbearance to customers in line with its own policies and procedures put in place to comply with CONC 7.3.5G.

TAKE NOTE - OVERDRAFT REPEAT USE RULES

The guidance instructs firms that where there is evidence that the customer is showing signs of financial strain and is seeking to rely on an overdraft facility, a firm may in the current exceptional circumstances arising out of COVID-19 re-consider how they communicate with such customers. Specifically, firms may take a flexible approach to the requirements imposed by CONC 5D.3.1R which obligates firms to develop and implement strategies designed to support customers that are frequent users of overdraft facilities. In the guidance the FCA have indicated that this may include a consideration as to whether it is appropriate to delay the timing of contact with such identified customers.

3. PAYMENT DEFERRALS & REVISED TERMS – APPROACHES

Firms still need to comply with the requirements of the CCA and CONC when providing customers with payment deferrals. There are effectively four approaches that lenders can take, and we have summarised the key issues for each below:

(1) Modifying agreements

- A bilateral agreement to amend the contractual terms, effectively revoking and replacing the original credit agreement
- Requires adherence to the CCA's complex drafting rules, rules of execution and the provision of copies
- Errors can result in the credit agreement being unenforceable without a court order

⁷ <https://www.fca.org.uk/publication/policy/ps19-16.pdf>

(2) Forbearance / waiver

- Contractual agreement is not varied and stays in force, the lender's rights are simply waived for a temporary period
- Customer is treated as "missing" their payments, so notices of sums in arrears must still be sent
- Must be communicated to the customer in a manner which is clear, fair and not misleading
- Can inadvertently trigger a modifying agreement, which will then not be documented correctly in line with CCA requirements making the agreement unenforceable without a court order

(3) Unilateral variation

- Varying the contractual terms unilaterally only works if there is an appropriate variation provision in the agreement
- Can inadvertently trigger a modifying agreement, which will then not be documented correctly in line with CCA requirements making the agreement unenforceable without a court order

(4) Refinance under a wholly new agreement

- Requires adherence to the CCA and CONC's rules in respect of refinancing including in relation to the form and content of the agreement, execution and the provision of copies

Each of the above carry a level of regulatory risk and / or administrative burden, so it is crucial that firms ensure they act in accordance with the requirements of the CCA. This is particularly important given that it is highly likely that claims management companies will interrogate firms' approaches at some point in the future.

WHO TO CONTACT

If you would like to know more or would like to discuss anything further, please contact

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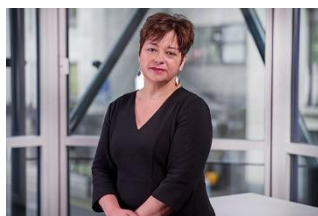
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