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Consultation Response:

FCA proposals to further support motor finance and high cost credit

Response by the Money Advice Trust

Date: July 2020

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Introduction

About the Money Advice Trust

The Money Advice Trust is a charity founded in 1991 to help people across the UK tackle their debts and manage their money with confidence.

The Trust's main activities are giving advice, supporting advisers and improving the UK's money and debt environment.

In 2019, our National Debtline and Business Debtline advisers provided help to more than 199,400 people by phone and webchat, with 1.97 million visits to our advice websites.

In addition to these frontline services, our Wiseradviser service provides training to free-to-client advice organisations across the UK and in 2019 we delivered this free training to over 981 organisations.

We use the intelligence and insight gained from these activities to improve the UK's money and debt environment by contributing to policy developments and public debate around these issues.

Find out more at www.moneyadvicetrust.org

Our response to Covid-19

As a result of the Covid-19 outbreak, all Money Advice Trust staff – have been working from home since Monday 23rd March. This includes all National Debtline and Business Debtline advisers, who are advising clients by phone and webchat after a significant infrastructure project to support this transformation, delivered at speed.

We have published new National Debtline and Business Debtline Coronavirus factsheets to provide information and advice to people whose household and small business finances have been affected by the Covid-19 outbreak. These are being continually updated and are available at www.nationaldebtline.org/coronavirus and www.businessdebtline.org/coronavirus

On 19th March the Money Advice Trust and StepChange Debt Charity published our joint [Rescue Package](#) proposal to Government and we continue to share evidence from National Debtline and Business Debtline to help shape the Government's, regulators' and creditors' policy responses. For more information on the Money Advice Trust's response to Covid-19 visit www.moneyadvicetrust.org/coronavirus.

Public disclosure

Please note that we consent to public disclosure of this response.

Summary of our response

We welcome the FCA's proposal to extend the temporary guidance protections for consumers with motor finance, high-cost short-term credit agreements, rent to own and buy-now-pay-later agreements to 31st October 2020.

However, we do not think that the assistance being offered to consumers with high-cost short-term credit agreements (HCSTC) goes far enough. The guidance makes it clear that, unlike other forms of borrowing, a payment deferral can only be made once in the period up to 31st October 2020. This appears to us to be an inconsistent approach with other forms of credit and fails to offer a similar level of protection for consumers with HCSTC agreements.

We remain of the view that the period of payment deferral for HCSTC should be three months, rather than one month. We would like to see the recognition that no interest should accrue, seemingly accepted by the FCA in the case of HCSTC, extended to other forms of credit including hire purchase, credit cards, unsecured loans and so on.

We welcome the availability of partial payment deferrals as well as full payment deferrals for motor finance, rent to own and buy-now-pay-later agreements.

As we have said in previous responses, it has become clear to our advisers at National Debtline that the use of the language of payment "holidays" has not been helpful. Some of our clients are misunderstanding the nature of the payment deferral. It is vital that lenders make it clear that the balance is still outstanding, and that interest is accruing. It is also important that lenders explain how this will affect their customers' payments in the future.

Firms should be closely monitored by the FCA to ensure they are complying with the letter and spirit of these rules. For example, we have come across cases where firms have refused to help without first referring its clients for debt advice. In addition, some firms appear confused about the rules where someone was in financial difficulties before the Covid-19 outbreak, and when to apply these payment deferral rules in those circumstances.

As hire purchase and rent-to-own agreements are forms of secured lending, the FCA should pay close attention to any firm that continues to threaten to take repossession action or actually takes such action during this period. This should include scrutiny of communications that threaten repossession action where there is no possibility of this happening under the present circumstances.

Finally, as we have said in all our consultation responses on the FCA's Covid-related temporary relief measures, we remain of the view that the guidance should require interest to be waived. Otherwise consumers will be required to resume repayments with a higher balance plus the rolled-up interest will have been added to their accounts.

Comments on the draft guidance

Motor finance agreements and coronavirus: updated temporary guidance for firms

We welcome the FCA decision to extend the temporary guidance to 31st October 2020. It is helpful to see that the guidance allows for an extension to the payment deferrals for a further three months. It also allows for partial payment deferrals. There should be every reason to grant a payment break in such circumstances, as the finance agreement remains secured by an asset.

We also welcome this statement relating to fees and charges.

“1.19 A customer should have no liability to pay any charge or fee in connection with the permitting of a full or partial payment deferral, or a different solution where a payment deferral has been deemed not in the customer’s interests, under this guidance. The continuing accrual of interest on sums owed under the agreement that remain unpaid would not be inconsistent with this guidance.”

However, we are concerned that the guidance again allows interest to accrue on the missing payments. However, we are concerned that the guidance again allows interest to accrue on the missing payments. While we understand the regulator has taken a different view, we remain concerned that the continued accrual of interest will store up financial difficulty later on.

We are pleased to see that the guidance suggests firms could go beyond the scope of the guidance and freeze interest. However we would like to see the FCA be more directive to firms on freezing and waiving interest charges in these circumstances.

“1.31 The guidance does not preclude a firm from offering a more generous form of support, such as waiving of interest.”

The “interest waiver” section gives clarity that where a consumer has received a payment deferral but subsequently needs forbearance measures under CONC 7, that interest should be remitted on those payments.

“1.61 The effect of the interest waiver should be that a customer would not, in respect of the deferred amounts, be in a worse position, in terms of interest, than if they had paid those amounts in full in accordance with the agreement.”

Whilst this is helpful, it does not go as far as waiving interest for all consumers on payment deferrals, and comes with the recognition that the consumers affected will be going down a debt recovery route at this point.

It is increasingly clear that there may well be trouble ahead for consumers seeking further credit after a payment deferral. We are pleased to see that the guidance again states that payment deferrals will not be recorded on credit files. However, we do not believe that the caveat in this section will be sufficient to warn borrowers of the potential consequences on future borrowing.

“1.33 Firms should also explain that while a worsening status will not be reported to the customer’s credit file in respect of any payment deferral taken under this guidance, lenders may take into account other information when making future lending decisions, including, for example, information provided by applicants or bank account information.”

It is important that firms are proactive in contacting customers who are coming to the end of protection, as the guidance makes it clear that full payments will resume if the customer does not contact their lender. We are concerned that “reasonable steps” will not be directive enough.

“1.37 Firms should take reasonable steps to contact their customers in good time before the end of an initial payment deferral period about resuming payments and to engage with them about their options when it expires. This can be done through a digital or scripted process.”

It will make sense to most people that missing loan payments can be added to the end of the loan period—thus increasing the loan term, or paid back by extra payments over the lifetime of the loan (if the loan period is long enough to make this feasible for the consumer).

We welcome the statement that repossessions should not be taking place and are likely to contravene Principle 6.

“1.69 We consider that seeking to terminate the agreement or commencing or continuing repossession action as described above is very likely to contravene Principle 6 - absent exceptional circumstances (such as a customer requesting that repossession continues).”

The FCA should bear in mind the nature of hire purchase agreements which means that the firm has a great deal of power in any negotiations given the threat of terminating the agreement and repossession of a vehicle that might be vital to that customer and their household. Therefore, the section on repossessions in the draft guidance is vital. We do not believe it goes far enough to protect consumers, as it seems to suggest that some repossessions can still take place. The guidance is also silent on firms using threats of termination or repossession in their communications.

The FCA should continue to pay close attention to any firm that continues to threaten to take repossession action or actually takes such action during this period. This should include scrutiny of communications that threaten repossession action where there is no possibility of this happening under the present circumstances.

We welcome the section on “Debt help and money guidance”. Based on what our advisers are hearing at National Debtline, it would be worth making it clearer that firms cannot make it a requirement to seek debt advice before granting a payment deferral.

High-cost short-term credit agreements and coronavirus: updated temporary guidance for firms

We remain concerned that the FCA continues to take a very different approach to high-cost short-term credit (HCSTC) in its draft guidance which has limited a payment deferral to a period of one month. We do not think that the assistance being offered to consumers with HCSTC agreements goes far enough.

The guidance makes it clear that, unlike other borrowing, a payment deferral can only be made once in the period up to 31st October 2020. This appears to us to be an inconsistent approach with other forms of credit and fails to offer a similar level of protection for consumers with HCSTC agreements.

“1.24 Customers should be able to request a payment deferral at any point up to 31 October 2020. This means that a payment deferral could go beyond that date. The application for a payment deferral can only be made once under this guidance, although where customers encounter further difficulties arising from coronavirus firms will need to consider forbearance under our rules where these apply.”

It appears from the guidance that the FCA expects firms to go straight into the usual debt recovery and forbearance measures after a single payment deferral period, with the associated impact on credit files. We are not convinced that this is a comparative or fair treatment of those with HCSTC agreements as compared with other types of consumer credit. We cannot see any explanation from the FCA as to why this is the case.

“1.29 We expect firms to use the deferral period to engage with their customers to understand the likelihood of their being able to resume payments at the end of the deferral period. Where a customer continues, or reasonably expects to continue, to face payment difficulties, as a result of circumstances relating to coronavirus, the firm should apply CONC 7.3 regardless of whether or not a customer is in default or arrears. Firms will need to assess the customer’s needs and ability to pay, and provide appropriate forbearance.”

We welcome the statement that firms should not put pressure on their customers, but this does not go any further than the normal CONC rules so whilst always worth reiterating, does not provide any extra help at this time for people affected by the Covid-19 crisis.

“1.32 Firms should also comply with the other provisions of CONC 7.3. In particular, CONC 7.3.10R provides that a firm must not pressurise a customer:

- ✓ *to pay a debt in one single or very few repayments or in unreasonably large amounts, when to do so would have an adverse impact on the customer's financial circumstances;*
- ✓ *to pay a debt within an unreasonably short period of time; or*
- ✓ *to raise funds to repay the debt by selling their property, borrowing money or increasing existing borrowing. “*

We welcome, however, the draft guidance on HCSTC in so far as it relates to interest charges – this appears to be an acceptance of this principle by the regulator, which could reasonably be applied across all forms of consumer credit as we have previously called for.

“1.20 In order to treat customers fairly in the current exceptional circumstances, any interest that would not have accrued but for the payment deferral should not be charged. The effect of this should be that a customer would not, in respect of the deferred amount, be in a worse position, in terms of interest, than if they had paid such amount in full in accordance with the agreement.”

Rent-to-own, buy-now pay-later and pawnbroking agreements and coronavirus: draft updated temporary guidance for firms

We welcome the FCA decision to extend the temporary guidance relating to rent-to-own, buy-now pay-later and pawnbroking agreements to 31st October 2020. It is helpful to see that the guidance allows for an extension to existing payment deferrals for a further three months. It also allows for partial payment deferrals as well as full payment deferrals. The provisions set out in the guidance appear consistent with the approach taken for most other forms of credit.

We are pleased to see the FCA raising the possibility of firms waiving interest. However, as we have set out previously, we believe the FCA should be more directive to firms on freezing and waiving interest charges in these circumstances.

We welcome the “interest waiver” section which sets out how firms should deal with interest. This section gives clarity that where a consumer has received a payment deferral but subsequently needs forbearance measures under CONC 7, that interest should be remitted on those payments.

“1.76 The effect of the interest waiver should be that a customer would not, in respect of the deferred amounts, be in a worse position, in terms of interest, than if they had paid those amounts in full in accordance with the agreement.”

Again, whilst this is helpful, it does not go as far as waiving interest for all consumers on payment deferrals, and comes with the recognition that the consumers affected will be going down a debt recovery route at this point.

We continue to have concerns over the draft guidance proposals allow for the charging of contractual interest on rent-to-own agreements. Surely there will be greater overall debt burden for anyone where interest continues to accrue in such circumstances as compared to reduced or waived interest. This section of the guidance could lead firms to conclude that a payment deferral is not in the customer’s best interests. However, if interest was to be waived for all, then adding three payments to the end of the agreement would be likely to be beneficial for most customers-if they can afford the normal monthly payments when they resume.

Again, we note the section on obtaining future credit after a payment deferral. We are pleased to see that the guidance again states that payment deferrals will not be recorded on credit files. However, we do not believe the caveat in this section will be sufficient to warn borrowers of the potential consequences on future borrowing.

“1.42 In addition, firms should explain that a worsening status will not be reported to the customer’s credit file in respect of any payment deferral taken under this guidance. But lenders may take into account other information when making future lending decisions, including, for example, information provided by applicants or bank account information.”

We are pleased to see the section on repossession of goods under rent to own agreements. We welcome the statement that repossessions should not be taking place and are likely to contravene Principle 6.

“1.88 Where a customer is experiencing temporary difficulties related to coronavirus and needs the goods, we consider that commencing or continuing repossession action is very likely to contravene Principle 6 – absent exceptional circumstances (such as a customer requesting that repossession continues).”

We would hope that the FCA is continuing to pay close attention to any firm that continues to threaten to take repossession action or actually takes such action during this period. This should include scrutiny of communications that threaten repossession action where there is no possibility of this happening under the present circumstances.

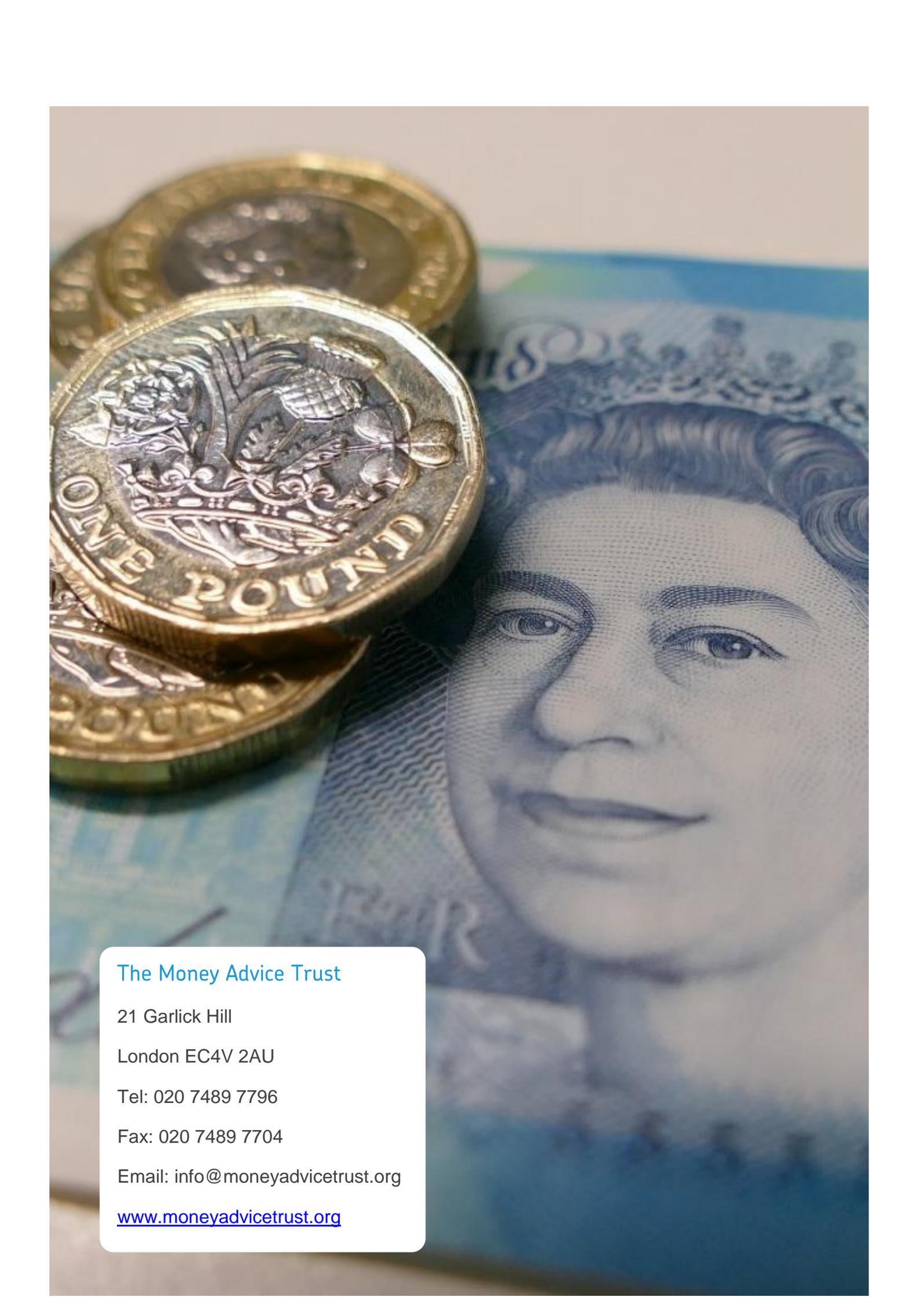
We welcome the section on “Debt help and money guidance”. As with motor finance, it would be worth making it clear that firms cannot make it a requirement to seek debt advice before granting a payment deferral.

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