Call for input: Ongoing support for consumers affected by coronavirus: mortgages and consumer credit

British Vehicle Rental and Leasing Association (BVRLA) Response

Introduction

BVRLA members are responsible for a fleet of over five million vehicles, that's 1-in-8 cars, 1-in-5 vans and 1-in-4 trucks on UK roads. The vehicle rental and leasing industry supports over 465,000 jobs, adds £7.6bn in tax revenues and contributes £49bn to the UK economy each year.

The BVRLA welcomes the opportunity to comment on the FCA's call for input regarding support for consumers affected by coronavirus with mortgages and consumer credit. We have focussed our response on the options for consumers with personal contract hire agreements.

It is important that motor finance companies provide customers with the support and flexibility that they need during this crisis period and beyond. This flexibility must ensure that firms take individual circumstances into account and provide the most appropriate forbearance measures to achieve the best customer outcome. At the same time, the FCA needs to recognise the extreme forbearance burden that motor finance providers are under and work with lenders to address this.

Crucial juncture for sector

As the long-term economic impacts of the coronavirus pandemic take root "temporary payment difficulties" are more likely to transition into "permanent payment difficulties". Motor finance involves a depreciating asset, which means firms will see losses widen for every month of forbearance, often being crystallised at the point of default. Even the largest firms could be under significant pressure if extended forbearance leads to a wave of hugely expensive defaults in October. The impact on level of competition in the market and diversity of offering will be profound. To continue to provide forbearance at these heightened levels, the sector needs Government support.

Coronavirus Lending Forbearance Guarantee

We repeat our request for the Government to work with the FCA in underwriting 80% of the economic losses resulting from coronavirus forbearance (the proposal is fully detailed in the Annex).

Without support, the sector will not be able to return to "business as usual" once the coronavirus pandemic ends. The loss of the current diverse range of finance providers and their specialisms will severely undermine both the consumer and SME offerings available post-crisis.

A Coronavirus Lending Forbearance Guarantee would safeguard the sector while allowing it to meet the Government's requirement that it continues to offer unprecedented and unsustainable support to customers in this extraordinary period.

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Access to funding

There are a number of non-bank-owned finance firms that are unable to access Government or Bank of England funding schemes. These lenders provide vital liquidity to a wide range of SMEs and consumers and the Government should support them by extending the eligibility criteria for existing funding schemes or by guaranteeing forbearance losses.

Across all funders, bank and non-bank, the huge liquidity pressure of forbearance and loss of income from the lockdown months will mean that there will be tightened criteria and limited liquidity for new lending. For the sector to facilitate the recovery while maintaining current levels of lending at current interest rates, support is required.

Government support for funders is needed to protect the market and deliver a sustained economic recovery.

Protecting customer best interest

The best interest of the customer is rightly at the centre of this call for input. This involves a fine balance between the need to provide short term relief through payment deferrals and the longer-term risk of an increased debt burden. The longer this goes on the harder it gets to manage the customer best interest and the more requirement there is for individual solutions based on the customer circumstances. We would therefore suggest that a return to standard forbearance rules as set out in CONC 7 at the end of October allows for the best management of this process. We have set out below the types of forbearance that are being offered on personal contract hire (PCH) products today which should give you assurances that consumers are being protected through the normal forbearance rules in CONC 7.

We recommend the FCA advises motor finance companies to return to standard forbearance rules as set out in CONC 7 at the end of October.

However, our members are still hampered in part by the constraints of the Consumer Credit Act (CCA) and we believe there are areas where this now urgently needs attention. For example, the ability to waive an early termination charge on a PCH product requires a modifying agreement under the CCA. It would be much easier if this could be done through an amendment.

The FCA should work with HM Treasury on amendments to the CCA to allow for greater flexibility on contract amendments where they are to the benefit of consumers.

Options after two payment deferrals

PCH does not offer as much flexibility as HP/PCP/conditional sale products in extending the contract term to allow for deferred payment because each additional month incurs a new rental charge, which is not the case under credit products.

When customers have already taken two payment deferrals, there is already up to six months' worth of rentals that have accrued and still require payment. The most appropriate solution would be to allow for repayment of the deferred payments within the original term of the contract when this is affordable for the customer. However, this is very much dependent on how long is left on

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the contract. If a customer has only six months left on their contract this would mean a doubling of their monthly payments which is unlikely to be affordable in many cases.

Equally a 3rd payment deferral is highly unlikely to be in the customer's best interests as they would be incurring more debt, which could result in them being in the car for longer plus the associated costs of that (insurance, breakdown, servicing, MOT etc.).

The optimal solution is to revert back to the CONC 7 forbearance rules and determine a solution which best fits the customer's needs, whether this be paying back the deferred amount within the original contract term or arranging a payment plan which goes beyond the original contract term with the vehicle being returned at the end of the original contract term. The latter option is a riskier approach as the customer may well be considering leasing another vehicle and could face the unaffordable prospect of paying for two vehicle leases simultaneously.

Options for customers facing redundancy

For customers with longer-term financial difficulties such as redundancy, we believe that regulated debt-counselling should be sought.

In a recent guidance update for motor finance firms, the FCA increased the sign-posting requirements for firms to provide, including their own information page and Money Advice Service (MAS) tools and guidance. For many customers, this will be the first time that they have been in financial difficulty. Some will have taken payment deferrals across a number of financial products, which will require them to contact each of their creditors individually to seek different forbearance solutions. Meanwhile, each creditor must be mindful to not stray into performing regulated debt-counselling activities and will not be able to consider the customer's full financial position.

We believe customers in this position should seek regulated debt-counselling with motor finance companies providing breathing space for a period, which is 30 days under current guidance. This period could be extended up to 60 days where progress towards agreeing a plan can be shown.

We recommend the FCA does more to encourage consumers facing redundancy to engage with a debt counsellor to support the management of their full financial position.

Early Termination Fees

There are a number of options to consider for customers where it is clear that keeping them in the vehicle is not in their best interests. They include:

- Deferring the payment of the early termination fee
- Waiving the early termination fee (dependent on how long is left on the contract)
- Swapping the customer into a more affordable car for their circumstances

A flexible rather than blanket approach is required. Each situation needs to be assessed by the motor finance company based on the individual customer's circumstances.

As previously mentioned, this can be challenging due to the restrictions of the Consumer Credit Act and the need for modifying agreements, which create an unnecessary administration burden.

We recommend the FCA does not take a blanket approach to early termination fees and allows firms to use the existing forbearance rules to find a solution that is in the best interests of the customer.

Customers in default or arrears

When customers cannot pay or default, forbearance is applied in accordance with CONC 7. The motor finance company will undertake an affordability assessment with the customer to determine whether they can afford to maintain the contractual payments and if so, whether an amount can be contributed to the arrears and/or deferred payments. The options therefore are:

- If the customer can afford to clear the arrears over a number of months a payment plan would be agreed.
- If the customer can afford the contractual payments but no amount towards the arrears, then the position will be reviewed at regular intervals with a view to agreeing a payment plan at a later date.
- If the customer cannot afford the contractual payments and there is no indication that this position will change then an explanation will be given as to why termination is in the customer's best interests. This would allow them to early terminate the agreement with a payment plan for any costs resulting from this.

This is also why our recommendation for regulated debt-counselling is needed. This approach ensures customers receive suitable and tailored advice for their specific position. It reduces the burden on creditors performing similar actions with the customer several times and most importantly, ensures better outcomes for customers.

Consumer evidence

A second three-month deferral of payments on a depreciating asset will have substantially increased the debt burden faced by many customers. Any future guidance should prioritise CONC 7 forbearance, with the option that is genuinely in the customer's best interest preferred.

To accurately determine what is in a customer's best interest, a firm will need sufficient information from the customer. The guidance should include more detail on what information customers can be expected to provide. Where customer information is not forthcoming, motor finance companies need guidance as to what actions they should take. This could remove pressure on companies wishing to comply with the guidance from offering, in cases of insufficient customer information, the most apparently generous form of immediate relief, which could be detrimental to the customer in the longer term.

All forbearance options should be equally prioritised, and customer information expectations expanded in the final guidance.

Repossessions

In some cases, it will be in the longer-term best interest of a customer for their vehicle to be repossessed. This will often be linked to circumstances from before the coronavirus pandemic which have worsened. Allowing these customers to continue to possess the vehicles will often only increase their indebtedness as the underlying asset depreciates in value. FCA guidance needs to include an acceptable process for motor finance companies to follow if they are to initiate termination procedures and repossessions in these circumstances.

This is particularly important in cases where the customer can no longer afford their vehicle's insurance. Leaving these customers with access to their vehicle is irresponsible. If a customer fails to insure the car, they can only be acting illegally with the vehicle. Firms must have the ability to repossess these vehicles.

The FCA needs to create a procedure for firms to repossess vehicles, particularly if a customer has ceased insurance payments.

Credit Reference Agencies

As part of its guidance, we believe the FCA should consider how payment deferrals are reported to credit reference agencies. We do not think this should be done negatively, but anyone looking at a customer's credit file should see their full financial profile, including how many payment deferrals they have had.

The FCA needs to provide guidance to firms on how to report payment deferrals to credit reference agencies.

ANNEX - CORONAVIRUS LENDING FORBEARANCE GUARANTEE

The objectives of the Coronavirus Lending Forbearance Guarantee would be to:

- ensure support can continue to be provided by lenders to consumers and business customers;
- enable the FCA to deliver its integrity objective under FSMA, in particular by protecting and enhancing the soundness, stability and resilience of the UK financial system, and
- enable the FCA to deliver its consumer protection and competition objectives.

Scope	***Description***	***Explanation***
Firms covered	FCA-regulated lenders and owners	• Providers of regulated credit or hire agreements (bank and non-bank)
Products covered	Regulated credit and hire agreements live at 23rd March 2020 and under which no forbearance had previously been requested or offered	• Non-coronavirus related credit risk should remain with the lender or owner • The above includes non-coronavirus related credit risk which crystallises before, during or after the temporary guidance period introduced by the FCA
Duration of cover	The remaining lifetime of the agreements above	• Compliance cost losses brought about by the forbearance offered in accordance with the temporary FCA guidance could crystallise either during or after the guidance period
Extent of cover	Guarantee covers [80%] of exceptional compliance costs suffered by lenders and owners as a consequence of forbearance offered in accordance with FCA temporary guidance	• Lender / owner retention of 20% of risk prevents moral hazard and incentivises them to provide forbearance responsibly • 100% cover disincentives cost-effective forbearance and could be inflationary • Lower cover disincentivises provision of forbearance

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Limitation of cover	Cover excludes compliance costs below a threshold ('excess') set by the FCA	• Compliance costs of forbearance that are not exceptional should not be covered.
		• The 'exceptional' threshold to be set by the FCA, taking into account its integrity and competition objectives.
		• Factors to take into account in setting the threshold include:
		  ○ retention of diverse and viable lending and hiring provision which ensures effective ongoing competition in the interests of consumers and business customers;
		  ○ the ability of the financial system to serve and meet the needs of diverse consumer and business segments (including SMEs non-prime, self-employed, low-income, gig economy and key workers), and
		  ○ the ability of the financial system to enable acquisition by consumers and businesses of assets, including in particular green assets.

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About the BVRLA

- Established in 1967, the BVRLA is the UK trade body for companies engaged in vehicle rental, leasing and fleet management.
- BVRLA members are responsible for a combined fleet of over five million cars, vans and trucks on UK roads, that's 1-in-8 cars, 1-in-5 vans and 1-in-4 trucks. The vehicle rental and leasing industry supports over 465,000 jobs, adds £7.6bn in tax revenues and contributes £49bn to the UK economy each year.
- On behalf of its 1,000+ member organisations, the BVRLA works with governments, public sector agencies, industry associations and key business influencers across a wide range of road transport, environmental, taxation, technology and finance-related issues.
- BVRLA membership provides customers with the reassurance that the company they are dealing with adheres to the highest standards of professionalism and fairness.
- The association achieves this by maintaining industry standards and regulatory compliance via its mandatory Codes of Conduct, inspection and governance programme and government-approved Alternative Dispute Resolution service. To support this work, the BVRLA promotes best practice through its extensive range of training, events and information-sharing activities.

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