StepChange Debt Charity

StepChange response to FCA consultation on strengthening protections for borrowers in financial difficulty

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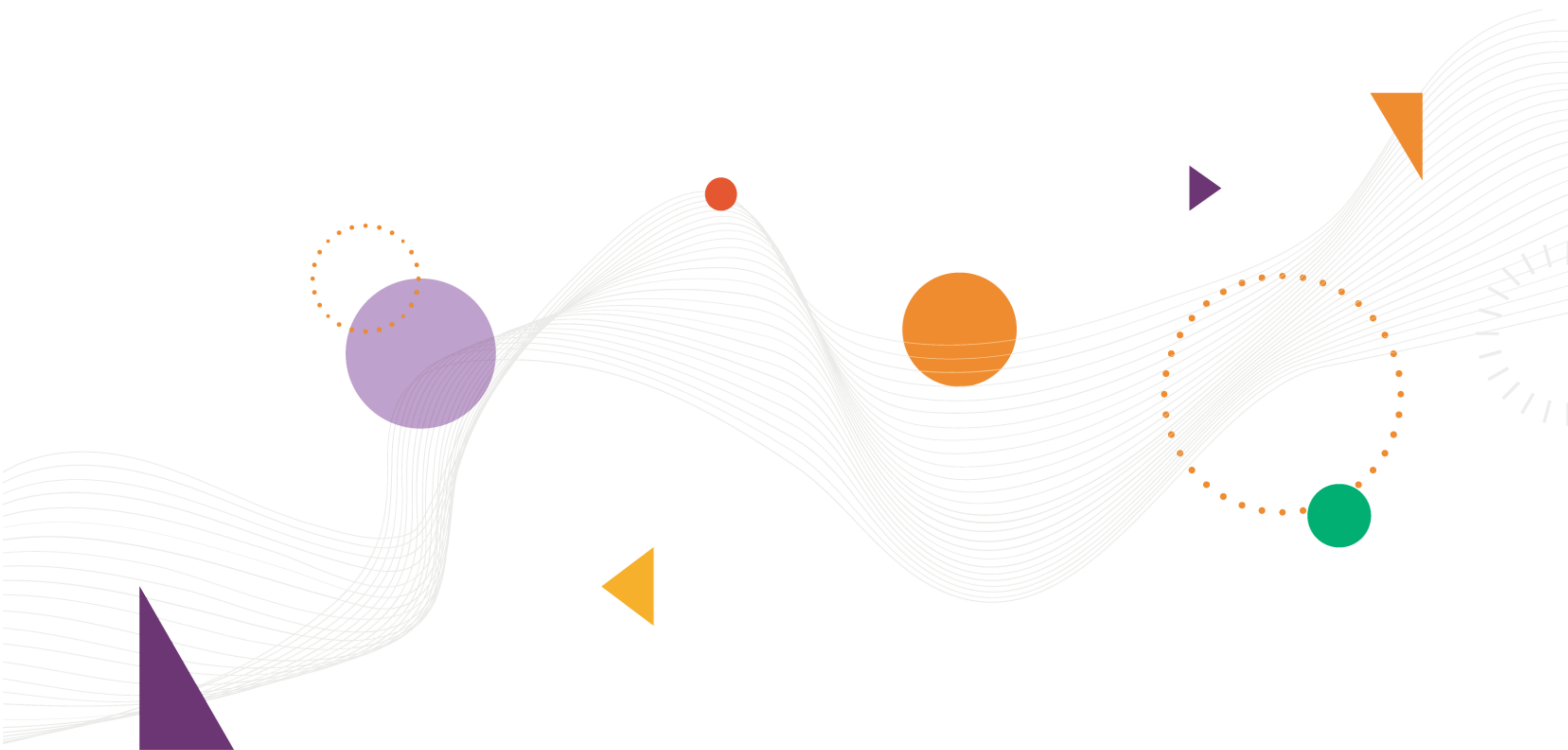

Summary

StepChange Debt Charity is a specialist not-for-profit provider of debt advice and debt solutions supporting people across the UK. In 2022, over half a million people contacted StepChange seeking debt advice or guidance with their problem debt, a 20% increase on 2021. 187,000 people completed full debt advice through our online and telephone service, a 9% increase on 2021.

We welcome this consultation on protections for borrowers in financial difficulty. Low financial resilience means significant numbers of consumers are at risk of financial difficulty. In May, 44% of UK adults reported finding it difficult to keep up with household bills and credit commitments, while 8% met StepChange's definition of severe problem debt. These figures are consistent with the evidence the FCA highlights of low financial resilience from its ongoing Financial Lives survey.

Widespread financial precarity means that financial difficulty is common among those who hold unsecured credit products and mortgages. In representative national polling commissioned by StepChange in May this year, 40% of those with outstanding unsecured credit products report having taken negative coping actions, such as cutting back to the point of hardship or borrowing using further credit, to keep up with credit repayments in the last three months.[1]

Among those experiencing difficulty repaying their debts, too many people who need support to address debt problems either do not get help, or get the help they need too late. In our client surveys, half of respondents tell us that they were in difficulty for over a year before they accessed debt advice.[2] The consultation document also makes reference to recent FCA research that supports our own findings about the significant delays between serious difficulty emerging and consumer engagement with support.

We have identified a specific problem of poor outcomes among people who are struggling to make ends meet and borrow to keep up with bills and existing credit commitments. This group, currently 13% of UK adults, is significantly more likely than others using unsecured credit to experience harm and poor outcomes: three quarters (71%) of those using credit this way report a negative impact on their health, relationships or ability to work, five times the proportion of others who hold credit products (15%).[3] 'Safety net' borrowing is a strong predicator of serious financial difficulty, but regulation and guidance do too little to prevent such financial difficulties journeys emerging, deepening and persisting, driving poor outcomes.

When people experiencing financial difficulty do seek help, that help is too often ineffective. Recent research commissioned by the FCA shows that the extent and effectiveness of creditor support for those struggling with debt repayments is variable.[4] This echoes with the experience of many of our clients, who have told us in surveys that they often, for example, experience continued charges even after they have bought their financial difficulty to the attention of the lender.[5] The good practice we also see among our creditor partners highlights that such conduct often arises in those organisations who are failing

[1] Figures from YouGov Plc. Total sample size was 2,120 adults. Fieldwork was undertaken between 4th - 5th May 2023. The survey was carried out online. The figures have been weighted and are representative of all UK adults (aged 18+).

[2] StepChange Debt Charity and Amplifi (2022) *Mixed Messages: Why communications to people in financial difficulty need to offer a clearer, better route to help*

[3] YouGov (May, 2023) and StepChange (2021) *Falling behind to keep up: the credit safety net and problem debt*

[4] Yonder Consulting (2022) *Borrowers in Financial Difficulty*

[5] StepChange (2021) *Falling behind to keep up*

customers due to cultural factors or poor processes. Even where firms know (or should know) customers are struggling, those customers often do not receive the effective support they need.

Not accessing support, or accessing help too late, lengthens and deepens financial difficulties unnecessarily, results in fewer options for customers to resolve their issues, and causes poor outcomes and additional harm to those affected, increasing the social cost of debt problems.

Our evidence shows that there are a set of interlocking issues that prevent emerging financial difficulty from being identified, stop people getting help when they need it and reduce the likelihood of those who do reach out for help from experiencing good outcomes:

- Features of credit products, like automatic credit limit increases and low minimum payments, that interact with behavioural bias to produce harmful coping patterns, which involving further borrowing or hardship, rather than prevention and early help.

- Gaps and weaknesses in credit information, confirmed by the FCA in its recent Credit Information Market Study interim report, alongside weaknesses in affordability rules, that contribute to unaffordable lending to those already in difficulty and undermine early identification.

- Worries about credit status deter people from getting help at every stage of their financial difficulties journey, even deterring people from seeking and acting on debt advice.

- Creditor communications using legalistic terminology and language perceived by customers to be threatening, often experienced in a context of repeated and sometimes excessive contact, trigger strong negative emotions and pessimistic views of how creditors will respond to requests for help.

- Conduct issues undermine the effectiveness of FCA rules and guidance so that, even where people do seek help, creditors can instead seek unaffordable repayment and fail to offer appropriate support. The power imbalance between customers and firms means that consumers feel forced to accept unrealistic proposals that often later fail.

StepChange research based on lived experience of financial difficulty shows that these issues are compounded by experiences, knowledge gaps and behavioural patterns that prevent people asking for help, such as:[6]

- embarrassment and stigma about struggling with debt;

- fear about consequences, including unaffordable demands for repayments, negative credit reporting (and financial and housing exclusion) and withdrawal of access to credit;

- mental health problems, often caused or exacerbated by financial difficulty, that lead to disengagement and difficulty processing information and taking action;

- low awareness of the support available from creditors and uncertainty about outcomes; and

- low awareness of what debt advice is, and the benefits it can deliver.

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[6] StepChange Debt Charity and Amplifi (2022) *Mixed Messages*

In a world with highly developed consumer credit markets and significant consumer financial vulnerability, financial services should play an important role in alerting consumers to their financial difficulty at the earliest possible point and helping them to take action and access help, but that is too often not the case.

Credit payment deferrals introduced temporarily during the pandemic showed how much more effective a clear, simple and attractive offer of help could be in engaging those struggling with support. Widespread take-up of payment deferrals reflected the significant extent of difficulty keeping up with credit repayments.

We welcome the FCA's proposals to bring key elements of the Tailored Support Guidance (TSG) into FCA rules and guidance. Shifting the focus of intervention to an earlier stage, taking steps to improve the effectiveness of signposting to money and debt advice, and strengthening requirements to agree sustainable forbearance and repayment agreements has significant potential to improve outcomes for struggling consumers. However, we are also disappointed the proposals focus narrowly on transposing and updating elements of the TSG and do not incorporate important learning from the impact of payment deferrals. As a result, the proposals do not go far enough to create the holistic, joined-up strategy to overcome barriers to ensuring struggling customers access effective help early and get the best possible outcomes. This risks not changing entrenched practices that are not working well enough and would be a significant missed opportunity.

The Consumer Duty rightly places a central focus on good outcomes as an organising principle of financial services regulation. The cross-cutting rules and guidance supporting the Duty place an emphasis on acting in good faith towards customers and avoiding causing foreseeable harm. These principles are each highly relevant to the barriers that prevent borrowers in financial difficulty getting effective help early. However, the proposals in this consultation are not yet fully aligned with the Duty. An effective strategy to address barriers to delivering better outcomes for consumers in financial difficulty must be cross-cutting and address issues including:

- A requirement for firms to develop and maintain an evidence- and data-driven early intervention strategy, focused on a proactive approach to identifying signs of pre-arrears difficulty and intervening effectively, building on learning from repeat overdraft use rules.

- The central importance of a simple, clear and attractive offer of help to engage struggling consumers, building on learning from pandemic payment deferrals (and more recently the Mortgage Charter agreed with lenders).

- Changes to credit information to ensure the system is effective at enabling firms to identify difficulty promptly, provides reassurance to consumers that they will not be disproportionately punished for seeking help and rewards those who maintain repayment agreements (building on the early steps of the Credit Information Market Study proposals).

- Targeted changes to rules and guidance concerning revolving credit that have a direct impact on creating, extending and deepening financial difficulties journeys, shaped by the Consumer Duty obligations to ensure credit products are properly adapted to the financial circumstances and needs of customers.

- An effective compliance and enforcement strategy to address persistent problems of firm conduct and culture where they exist.

Consumers in, or at risk of, financial difficulty are among those most vulnerable to poor outcomes and acute harms. As part of the process of embedding the Consumer Duty, the FCA should place specific emphasis on ensuring better outcomes for this group. This should include guiding a holistic programme of work across the FCA's workstreams to drive the change needed to prevent avoidable financial difficulties journeys.

The FCA should also state clearly the outcomes it hopes to deliver through the proposals and key metrics that can be used to judge so far as possible whether those outcomes have been achieved. A starting point for this is the list of outcomes set out in paragraph 1.1 of the TSG, which could be revised and updated.

Finally, proposals in this consultation will interact with the role of not-for-profit debt advice providers like StepChange. We have highlighted in our response where we are concerned there could be a lack of clarity over whether firms should make advice referrals for holistic support or support customers directly with internal treatments, potential duplication of budget assessments and the potential for conflict between budget assessments made by firms and advice providers, where the advice provider is regulated to give independent and impartial debt advice. There is also some possibility of new administrative burdens on advice providers through rules that could lead to increased creditor reviews. We have highlighted where we believe additional guidance is needed to mitigate and address these risks.

We also note the cost-benefit analysis indicates the FCA expects an additional 1.7 million customers to be signposted to debt advice each year as a result of the proposals. Experience of persistent credit card and repeat overdraft rules has shown that the impact of signposting on advice demand is unpredictable. We are also aware that more effective early intervention could affect demand for advice in different ways, leading to earlier (rather than increased) referrals and in some cases fewer referrals where better support from lenders prevents financial difficulty from escalating in the first place. However, it is important the FCA works closely through the UK Regulators Network and the Money and Pensions Service Debt Advice Reference Group, to properly assess and monitor impacts on not-for-profit advice demand and capacity.

Responses to consultation questions

Q1: Do you agree with our proposed changes to the scope of: a. CONC 5 & 7? b. MCOB 13?

We agree that CONC rules and guidance should be extended to require that firms provide appropriate support to customers approaching arrears. At present, firms are too focused on reacting to obvious signs of difficulty, like missing repayments, rather than signals that are appropriate to earlier intervention, such as the level of financial strain a customer is experiencing. The proposed change will help increase engagement with customers at an earlier stage to minimise harms and improve the likelihood of customers being able to achieve good outcomes.

However, the proposed rules do not go far enough to address the underlying problem of ineffective early intervention, which requires a stronger shift in emphasis, to require lenders to proactively seek to identify emerging difficulty. There should, in particular, be a stronger emphasis on a proactive, evidence- and data-driven approach to early intervention. The repeat overdraft use rules (CONC 5D.2) show how rules can be framed to require firms to monitor data, identify difficulty and intervene appropriately. For example, in particular 5D.1.1R (3) requires firms to use account information to look for signs of financial difficulty. Similar language should be developed to ensure firms take a systematic approach maximising, so far as reasonably possible, use of the relevant data they have available to identify emerging difficulty. The FCA

should also encourage firms to develop such sources of data and information, for example through tools or dashboards and make them available to customers to help them to understand when they may need help.

In regard to the proposed language, framing 7.3.4A in relation to situations in which a customer indicates to the firm that they are at risk of not meeting one or more repayments when they are due, also risks limiting the effectiveness of the proposals. Experience has shown that struggling customers are reluctant to self-identify for a number of reasons, including low awareness, anxiety, stigma and fears of the potential negative impact of asking for help with their situation. Our *Falling behind to keep up* research found that borrowers in difficulty tend to become more reluctant to ask for help as their difficulty increases and often pursue coping strategies, like further borrowing, likely to make their situation worse, rather than seeking support. Relying on customers themselves to trigger the engagement in a context in which they are facing multiple barriers to asking for help and the offer of support is unclear therefore tends to be ineffective. In contrast, pandemic payment deferrals showed how a widespread clear attractive offer of help with few strings or stigma attached, was much more successful in driving customers to engage with firms.

Customers ‘approaching arrears’ are often unaware that they need and would benefit from help. One of the most common experiences we see among those in pre-arrears situations is that they continue to make repayments despite being under extreme financial stress and pursuing counter-productive coping strategies. In this situation, a customer may reasonably have the view that they can make repayments and therefore not meet the word (if not the spirit) of the proposed guidance, even though this is precisely the type of situation in which a firm should intervene. Moreover, firms may interpret being ‘at risk of not meeting one or more repayments’ with an excessively narrow viewpoint, without clear wording framing the intent of the guidance.

We would like to see the FCA add wording clarifying that being unable to meet repayments includes situations in which a customer cannot affordably meet repayments. We would also like the FCA to put in place guidance to ensure this measure does not rest solely on customers proactively triggering support from firms; this could be achieved by extending the wording of 7.3.4A to include situations in which firms are aware that a customer is at risk of not meeting repayments.

The FCA should also give consideration to rules requiring firms to set out on their websites in a prominent location the support and options that can be considered when a borrower is experiencing financial difficulties (or knows that they will). This information should be communicated in such a way to make it comprehensible to customers experiencing financial difficulties, taking account of the circumstances of those customers. Payment deferrals, and firm communications to support deferrals, showed how effective a better offer of help could be in surfacing and engaging customers in difficulty. The end of payment deferrals has left a gap and the situation has reverted to one in which there is an unclear offer of support. We welcome the FCA’s proposals to require banks to set out information in a prominent online location on overdraft support. That proposal is highly relevant to, and should be extended to, other forms of credit.

Further work to test and share the most effective approaches to engaging struggling customers would be valuable and there are tools available to test engagement throughout the customer journey. Advice providers like StepChange also use short questionnaires to help establish a client’s situation. The good evidence of the relationship between debt-to-income ratio and financial distress is an example of how self-reported metrics that can be used to help customers understand when they may need help.

We also support the proposed amendments to CONC 5D to set out expectations that firms should identify customers who are showing a pattern of repeat overdraft use as early as possible. However, we are

unclear why this language ('as early as possible') would not be appropriate to CONC 7 and customers approaching arrears. It would not impose an unlimited commitment on firms, but would send an appropriately strong signal that firms should be seeking to engage at the earliest stage reasonably possible to increase the likelihood of delivering a better customer outcome.

Q2: Do you agree with our proposals to include a new Handbook rule and associated Handbook guidance, covering the reviews of the effectiveness of policies and procedures: a. in CONC 7? b. in MCOB 13?

We broadly support adding new rules to CONC 7 and MCOB 13 requiring firms to have and review the effectiveness of policies and procedures in respect of customers in or approaching arrears or default.

We agree that requiring reviews to take place at 'appropriate' intervals makes sense to ensure reviews are responsive to changing external circumstances. We would like to see the FCA provide some definition to the nature of circumstances that should prompt reviews, to help ensure that such reviews take place when appropriate (but not limit them). Guidance should also address the need for firms to monitor review outcomes to show that reviews are responsive to customer's changes in circumstances. Because we see outliers in firms' interpretation of FCA rules and guidance, we also think it is important to use supporting guidance to set some minimum expectation of the regularity of such reviews and the format they take; for example, we note some firms conduct desktop reviews which involve no contact with the customer and therefore it is harder to identify if the customer is still receiving a good outcome.

We also support proposed supporting guidance for firms to ensure these reviews consider the customer's overall experience. We would question, however, whether the proposed 'overall experience' wording risks setting expectations parallel to, and therefore potentially diluting, the Consumer Duty focus on good outcomes. Alternative wording linking the proposed reviews to good outcomes would be less vague and more consistent with the objectives of early intervention and the Consumer Duty.

Q3: Do you have any comments on our updated references to the fair treatment of vulnerable customers: a. for CONC 7? b. for MCOB 13?

We support the proposals to update sourcebook references to vulnerable customers in CONC 7 and MCOB 13.

We welcomed the emphasis in the FCA's vulnerability guidance on the situational nature of consumer vulnerability. This insight is particularly relevant to the credit market, where products can be a source of, and compound, vulnerabilities through design that creates financial difficulty and has adverse effects on health and other determinants of outcomes.

In our response to the FCA's consultations on the Consumer Duty we highlighted that the Consumer Duty guidance had little to say about early intervention and financial difficulty. This consultation is helping to address that gap but, as we highlight in the preamble to our response, we think the FCA has not done enough to ensure firms look further and deeper into their relationships with their customers where difficulty arises and the resulting outcomes than they currently do.

Either alongside this piece of work or as the FCA updates its vulnerability guidance in future, it is crucial to elaborate on the relationship between financial difficulty, vulnerability and outcomes. In our *Mixed messages* research, who found that a third of people who delayed seeking debt advice said this was

because they 'were not in a fit state to help themselves'.[7] They were more likely to ignore communications and to borrow more to deal with payment requests. These insights show how financial difficulty creates vulnerability that leads to actions that compound that difficulty. Firms must understand this dynamic, and the influence of their products, services and conduct, to prevent financial difficulty emerging and deepening and pursue effective early intervention strategies to mitigate this.

The Consumer Duty has the potential to help address this gap in regulation and firms' understanding, by including concepts of vulnerability and behavioural bias in its ruleset. But the absence of rules or guidance, creating a bridge from those rules to situations of financial difficulty, is likely to leave firms' practice and interpretation too close to the status quo to fundamentally shift outcomes.

We also noted in our response to the FCA's final consultation on guidance for firms on the fair treatment of vulnerable customers, that there is more work to do to elaborate on how protected characteristics interact with, and may compound, vulnerability in the context of financial services. Customers in these groups may, for example, be less open about their situation or problems if they have faced discrimination in the past, which may be detrimental to those with low capability or resilience. Vulnerability guidance is not a substitute for paying due regard to diversity and equalities duties. We welcomed the FCA's memorandum of understanding with the Equality and Human Rights Commission. We would now like to see further work to improve understanding as to how protected characteristics interact with vulnerability, to provide firms with the tools and insight needed to apply the Consumer Duty and the wider rulebook to meet the needs of diverse consumers.

Q4: Do you agree with our proposals to add to the existing list of forbearance options at: a. CONC 7.3.5G & CONC 5D 3.3(4)G? b. MCOB 13.3.4AR?

We agree with the proposed additional examples of forbearance options.

The proposed text for the third example (token payments) indicates that this option would be appropriate where meeting debt repayments would mean not being able to meet 'priority debts or essential living expenses'. In light of the wording of rules elsewhere, this language is too minimalistic and could lead to customers not being offered token payments (or a payment suspension) when that is the most appropriate forbearance option.

Token payments may be an appropriate option where a customer cannot affordably make any payment beyond a token sum. The FCA is rightly using this consultation to propose measures elsewhere to ensure firms use an objective method of assessing income and expenditure, to ensure affordable and sustainable repayment agreements. Any objective method like the SFS shows that expenses cannot be limited to food, shelter and priority bills and still capture minimum reasonable living costs.

The shorthand language the FCA uses will be important in guiding the models firms use where they do not conduct detailed income and expenditure assessments. We would therefore like to see the FCA avoid, deliberately or otherwise, giving license to firms to minimise expenses in a way that is inconsistent with the intent of the rules (sustainable forbearance agreements).

Here we note 5D.1.1A(G), in relation to identifying financial difficulty among customers with overdraft debt, states that 'A customer is likely to experience financial hardship if they are unable to pay priority debts or living expenses' (emphasis added).

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[7] StepChange (2022) *Mixed messages*

The FCA can address this concern by removing the word 'essential', as in 5D.1.1A(G), or using clarifying language to prevent an unreasonably minimalistic interpretation of 'essential living expenses'. We note options to achieve this in our response to question 11.

Q5: Do you agree with our proposals on the transparency and accessibility of forbearance options: a. to CONC at CONC 7.3.13A, CONC 5D 3.9G and CONC 5D 3.3G(7)? b. to MCOB 13.3.4C?

We support the proposed additional language requiring firms to offer to engage with customers through a range of channels, communicate the channels available and change the channel of communication if necessary.

We would welcome more emphasis on supporting customers to engage through appropriate channels (rather than offering to engage).

Q6: Do you agree with our proposals relating to effective customer engagement and communication around money guidance and debt advice: a. in CONC 7.3.7A? b. in MCOB 13.3.2AR?

We broadly support the proposals to extend and strengthen guidance on effective customer engagement and communication around money guidance and debt advice.

Signposting (information provision) alone is a relatively ineffective engagement strategy and will not prevent harmful financial difficulties journeys for pre-arrears customers. Explaining the benefits of debt advice can increase the effectiveness of information in engaging struggling customers with support but is not, of itself, a sufficiently effective engagement strategy.

The wide take-up of pandemic payment deferrals, including among many who did not experience a pandemic-related income shock, was a clear signal that the existing approach, even where firms were acting in line with, or exceeding, rules and guidance is not sufficiently effective. A simple, clear offer of help surfaced widespread need for relief from repayment pressures, without the associated negative feelings of shame and embarrassment or a negative impact to mental health.

Rather than rely on information provision, the FCA should require firms to develop an engagement strategy for borrowers in financial difficulty. This can (and should be) closely linked to firms' work to continue to implement and then comply with the Consumer Duty on an ongoing basis.

This noted, we agree the with proposals to expand the range of situations in which customers should be signposted to debt advice to those approaching arrears (and customers with a pattern of repeat overdraft use where there are signs of actual or potential financial difficulties).

In general, we would encourage signposting to impartial money and debt advice be more active, for example working with the advice provider to use referral tools to create a higher likelihood of engagement and take-up, and a better customer experience. This type of referral also allows for tracking that means advice providers can report outcomes back to the referring lender so they know if they need to take any further action (and can monitor outcomes).

We would like to see the FCA, alongside MaPS, help facilitate a curated process to develop best practice guidance. Ideally, this should include research to test and develop the most effective approaches to explaining and creating engagement with debt advice among struggling customers. As a starting point, in our *Mixed messages* research, we set out how a group of our clients perceived the information they

received from firms about debt advice. This evidence showed that not understanding the benefits of debt advice was a barrier to seeking help, supporting the FCA's proposed approach. However, there were also additional dimensions to clients' concerns, such as concerns about credit reporting (some clients had thought seeking advice would itself be recorded on a credit record) and not knowing which advice providers to trust. We proposed wording designed to encourage those who are struggling to seek help from a firm or a debt advisor.[8] This provides a reference point for the type of approach needed to explain the benefits of debt advice and build customers' confidence in the help they can access.

We welcome the proposed reference to the MaPS strategic toolkit for creditors and the emphasis therein of building referral partnerships. We would expect the process of developing referral partnerships to create a dialogue where needed about not-for-profit advice capacity and funding. As we note in the preamble to this response, the FCA should work through the UK Regulators Network and the Money and Pensions Service Debt Advice Reference Group to consider and address potential impacts of its proposals on likely advice demand, commissioning and with appropriate funding available to support the services needed from all not-for-profit providers.

The proposed wording requires firms to signpost to advice 'where appropriate'. The distinction between customers who are struggling with multiple creditors (or wider circumstances such as a recent life event) and those in more straightforward situation (such as a single debt and temporary budget shortfall) is crucial in making a judgement about whether a firm itself can effectively support the customer, or could create further harm if they intervene without fully or effectively considering the customer's wider indebtedness and circumstances. Equally, we would not wish firms to believe they can simply discharge their responsibilities in straightforward situations by making a referral to debt advice. The FCA should therefore give consideration to how it can develop guidance to support the assessment of appropriate debt advice referrals, and we would be happy to discuss this further.

Q7: Do you agree with our proposals to include further Handbook provisions on our expectations relating to customer engagement and communication: a. in CONC 7.3.13A and CONC 5D? b. in MCOB 13.3.4AR(2)?

We broadly support the proposed additional language in CONC 7.3.13A and CONC 5D.

However, we note that the proposed language in CONC 7.3.13A differs from the TSG and does not include a reference to communicating a customer's options (as in the final consumer credit TSG, paragraph 5.50). We would have expected this expectation to be transposed into 7.3.13A G 2(b) and are unclear why that is not the case. Communicating a customer's forbearance options and the benefits (and any impacts), is a crucial step to ensure struggling customers receive a clear, attractive offer of help.

7.3.13A G 2(b) makes reference to firms providing information on the potential impact of any forbearance or due consideration on the customer's credit file. Concerns about the impact of negative credit reporting are a significant driver of reluctant to seek help among those in financial difficulty. This is particularly driven by communications that come across as threatening or legalistic, and separately by credit reporting arrangements that are excessively blunt.

With this in mind, we would ask the FCA to consider carefully how to locate references to credit information in pro-engagement messaging. We note, for example, language in the recent Mortgage Charter that 'Anyone worried about their mortgage repayments can contact their lender for help and

[8] StepChange (2022) *Mixed messages*

guidance, without any impact on their credit file, and we would encourage you to contact your bank who are there to help'. While this language cannot be directly transposed into credit, it shows the importance of a positive up-front message. Proposals in the credit information market study interim report, to require firms to report payment arrangements against agreed, rather than contractual terms, would create an opportunity to encourage customers to come to a repayment agreement before missing payments and therefore avoid negative credit markers.

An approach that supports greater engagement among those in difficulty demands both carefully designed communications and a more subtle and responsive credit reporting system that allows space for customers to reach out without fear of immediate consequences. StepChange has highlighted improving the effectiveness of creditor communications as a key outcome of the present Consumer Credit Act review process alongside the introduction of the Consumer Duty, and the importance of making customer outcomes (and early intervention) a central objective of future credit information governance. Currently, regulation of support for borrowers in difficulty and credit information are too fragmented and not mutually complementary. The FCA should continue to draw together these two strands of work together to maximise engagement with people in financial difficulty.

Q8: Do you have any comments on these consequential amendments: a. in CONC? b. in MCOB?

We have no comment on the proposed amendments at this time.

Q9: Do you agree with our proposals to introduce requirements on escalating balances where a firm has put in place a sustainable repayment arrangement as a forbearance measure and the customer is meeting the terms of that arrangement?

We agree with FCA's proposals to require firms to suspend, reduce, waive or cancel any further interest or charges to the extent necessary to ensure that the level of debt under the arrangement does not rise for the period of the arrangement. In a 2021 survey of clients, 51% reported they had interest added to a debt after reporting that they were in financial difficulty.[9]

We recognise that it may be appropriate to vary a repayment agreement if a customer's circumstances change positively (in line with features of debt management agreements and insolvency solutions). However, the proposed wording risks implying that if a customer can repay more than previously, they are no longer in financial difficulty and interest charges can resume: if a firm initially suspends interest, any positive change of circumstances could be interpreted as permitting some additional charges. In most cases customers are still likely to need protection from escalating balances even if their ability to repay increases.

The lack of clarity of the proposed wording of 7.3.5H G risks confounding the purpose of 7.3.5G R. This would ultimately affect the sustainability of agreements as rising balances will take longer to repay and contribute to pressure on customers to repay more than is affordable.

The FCA should either remove 7.3.5H G or provide greater clarity to ensure this guidance cannot be interpreted in a way that leads to the arbitrary application of interest charges and poor outcomes.

Q10: Do you agree with our proposals on introducing guidance to help firms determine necessary and reasonable charges?

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[9] StepChange (2021) *Falling behind to keep up*

We support the FCA proposals but believe that CONC 7.7. (Application of interest and charges) is in need of more significant review in light of the Consumer Duty.

Late fee rates have remained stagnant for nearly two decades despite the administrative cost of recovering late payments falling due to technology advancements. The current £12 'cap' for credit cards was derived from 2006 Office of Fair Trading guidance, upon which the FCA built further guidance for all consumer credit products, stating they must charge 'no higher than necessary to cover the reasonable costs of the firm'.

Most consumers are not aware of late fees until they miss a payment and are charged, so fees do little to affect repayment behaviour. Moreover, most late fees are incurred due to circumstances outside of the control of customers, such as unexpected changes in circumstances.

Missing a credit payment is usually a signal of financial difficulty and should be the point at which a firm intervenes to support a customer and prevent the situation from becoming worse; instead, late fees mean struggling customers are subject to *additional* charges and balances continue to escalate until they explicitly identify as in difficulty, often after a lengthy period of struggling to keep up.

The aversion the FCA, StepChange and others have noted among customers in financial difficulty to asking for help means that late fees often persist well after financial difficulty has emerged, compounding that difficulty. Particularly in subprime revolving credit, late fees have been a significant source of revenue and contribute to escalating balances and interest charges, making it more difficult for those who are struggling to recover their situation.[10] The growing popularity of interest-free BNPL product models has created a situation in which a high proportion of adults are more likely to have multiple outstanding short-term loans and face multiple late fees if they experience a cash flow problem. Conduct issues mean some credit firms (across the market) continue to charge late fees even after customers have indicated they are in financial difficulty.

Late fees also distort competition in the interests of consumers, with firms which act more responsibly by not charging late fees or doing so on a minimal basis, undercut by firms which mask the true cost of lending with less responsible fee-charging policies.

In 2019, the FCA put an end to additional unauthorised overdraft charges, stating that 'vulnerable consumers are disproportionately hit by excessive charges'. Late fees in unsecured credit continue to have a similar effect, compounding and deepening financial difficulty among those who are struggling and make it harder for customer to achieve a good outcome.

In light of these issues, the current approach to late fees is inconsistent with the Consumer Duty principle and cross-cutting rules (acting to deliver good outcomes, acting in good faith and avoiding foreseeable harm). Ending late fees would remove a significant barrier to better outcomes for customers in financial difficulty and improve competition that serves the interests of consumers.

Q11: Do you agree with our proposals on sustainable repayment arrangements?

Firms should not put a repayment agreement to customers in financial difficulty unless they have considered affordability, as this is likely to lead to poor outcomes. We support steps to ensure that repayment agreements are sustainable. However, as drafted, the proposed rules will not ensure this is the case.

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[10] FCA (2015) *Credit card market study: interim report*; StepChange (2019) *Red card: subprime credit cards and problem debt*

Framing the sustainability of agreements in relation to ‘priority debts and essential living expenses including payments for mortgage, rent, council tax, food and utility bills’ is too narrow. The importance of the Single Financial Statement is that it captures realistic reasonable living costs and prompts an assessment of the real cost of living for a household (including, where appropriate, any additional costs such as those linked to disability or care). A repayment arrangement that includes mortgage, rent, council tax, food and utility bills but not other credit repayment agreements or the costs, for example, of raising a child (such as basic education materials and clothes) is not sustainable and therefore cannot deliver a good customer outcome.

7.3.5D R and 7.3.5E G, in making reference to the importance of the Single Financial Statement and an objective methodology in any assessment of income and expenditure indicate the FCA broadly shares this view. If a firm has undertaken sufficient assessment with a client to gather details of a budget, that budget should be based on a robust methodology using the SFS (or CFS) as a reference point.

As worded, the difference between 7.3.5B R and 7.3.5D R (and supporting guidance) muddies expectations, seeming to imply that ‘priority debts and essential living expenses including payments for mortgage, rent, council tax, food and utility bills’ is a minimum standard while 7.3.5D R supports the role of the SFS.

The proposed rules risk perpetuating a situation in which firms often put repayment proposals to customers without first adequately considering affordability. StepChange advisers regularly support clients who have completed a budgeting process with the charity, within the SFS guidelines, and that budget is not accepted by an FCA-regulated creditor. Moreover, customers in vulnerable situations are more likely to feel obliged to accept this rejection, or an unreasonable budget assessment made by a firm, and have little reason to believe they have any choice but to do so. Repayment agreements based on unrealistic budgets frequently fail because they were foreseeably not affordable from the outset.

The FCA should clarify the situation by:

- making clear reference in the rules to affordability as an essential component of sustainability;
- adding language requiring firms to consider affordability before proposing a repayment agreement unless they have good reason to believe an agreement is obviously affordable; and
- clarifying that the items in 7.3.5C G (2) are not exhaustive, i.e. by rephrasing the guidance to ‘Priority debts and living expenses include, but are not limited to, payments for mortgage, rent, council tax, food and utility bills.

Q12: Do you agree with our proposals requiring firms to take reasonable steps to ensure that forbearance measures remain appropriate?

We broadly support the proposed rule and guidance requiring firms to take reasonable steps to ensure forbearance or due consideration remains appropriate.

Presently, creditors that have agreed to a token payment plan would generally require a client to review their budget/plan after six to 12 months. Similarly, creditors who have agreed to a client’s request for a payment suspension will also generally review the situation after six to 12 months. This does, however, vary from creditor to creditor. If firms respond to the proposed changes by reviewing measures more frequently, such as every three months, this could trigger the need for a new budget and proposal from an

advice provider and, in turn, have an impact on debt advice service levels and deliver a poor customer experience.

The FCA should therefore give consideration to guidance to ensure firm do not interpret new guidance in a manner that drives excessively frequent reviews in a manner that is unlikely to benefit customers and would impact not-for-profit advice capacity.

Q13: Do you agree with our proposals for firms to objectively undertake income and expenditure assessments?

We support the objective of requiring firms to objectively undertake income and expenditure assessments, but do not agree the rules as drafted will achieve this aim because the proposed language defining objective is too vague.

As we note in our response to question 11, we are concerned that the proposed rules allow too much latitude for firms to agree repayment agreements that involve some level of budgeting assessment but fall short of an objective income and expenditure assessment. This will lead to more unsustainable agreements.

In 7.3.5E G (1) 'Sufficiently detailed information' is one dimension of an objective income and expenditure assessment but does not, of itself, provide a meaningful objective standard.

In the form of the SFS, there is an established and robust income and expenditure methodology overseen by an independent public body. While we recognise there is some flexibility needed in rules (for example, to accommodate the CFT), this can be achieved while providing clearer guidance for firms.

At minimum, 7.3.5E G (2) should read 'a firm should have regard to the spending guidelines in the Standard Financial Statement or an equivalent tool'.

The rules do not do enough to clarify the respective responsibilities of firms and regulated debt advice providers. This creates a risk that assessments conducted by debt advice providers will not be accepted by firms or duplicated (if both a firm and an advice provider have to undertake a repayment assessment).

This problem can be addressed by clarifying circumstances in which customers should be referred to debt advice (as we note in our response to question 6) and introducing guidance to the effect that firms should accept an income and expenditure assessment produced by a regulated not-for-profit debt advice body, unless there is an objectively justifiable reason for doing so (such as an obvious error). This would support requirements in CONC 7.12.2 R (unfair business practices in relation to dealing with regulated debt advice providers)

Q14: Do you agree with our proposed guidance for income and expenditure assessments on clear policies, assessing whether arrangements are appropriate and sustainable and making available to the customer a record of any income and expenditure assessment made to allow them to share with other lenders and debt advice providers?

As we note in responses to previous questions, the FCA should remove unnecessary ambiguity about the circumstances in which income and expenditure assessments are appropriate: where a customer is in financial difficulty, they are essential to agree a sustainable repayment agreement except in situations in which it is obvious a proposal is affordable.

That noted, we agree that firms should have clear policies to embed and use income and expenditure assessments, should continue to assess whether arrangements are sustainable and make available an assessment to be shared with other lenders and debt advice providers.

Q15: Do you agree with our proposals on repossessions?

We agree with the FCA proposals to extend CONC 7.3.17R to goods and vehicles, introduce a new rule that firms must not commence or continue repossession action for as long as the customer is meeting the terms of an agreed forbearance arrangement, and introduce supporting guidance.

Q16: Do you agree with our proposals on voluntary termination?

We agree with the FCA's proposals to require hire purchase firms to inform customers in good time of the right to voluntary termination, providing information that is easy to comprehend, fair and not misleading.

Q17: Do you agree with our proposed amendment to CONC App 1.2?

We have no comment on this proposal at this time.

Q18: Do you have any comments on the increasing balances proposals?

We broadly support the proposals to require firms to consider whether it is appropriate to reduce the interest rate taking into account a customer's circumstances and the effect on the customer's overall balance. This could provide a useful additional forbearance tool suited to the needs of some customers. This noted, we agree that there are risks of poor outcomes from an approach that is too permissive and that, therefore, rules should be framed carefully to balance potential benefits with overall consequences taking into account the outstanding balance. We would also urge the FCA to monitor application of new rules closely and review them if there is evidence of poor practice or outcomes.

Q19: Do you agree with our proposal to change and extend the scope of the rules in MCOB 13.4.1R and MCOB 13.5.1R to ensure more timely disclosure of information on any payment shortfall?

We support the proposed rules and have no further comment at this time.

Q20: Do you agree with our proposals to amend the guidance in MCOB 13.3.4DG?

Q21: Do you agree with the factors we propose a firm considers when determining whether capitalisation is appropriate?

Q22: Do you have any comments relating to determining the affordability of future capitalised payments?

We have no comment on the proposals to amend guidance on capitalisation at this time.

Q23: Do you agree with our proposals for firms to ensure that forbearance arrangements remain appropriate?

We agree with the proposals with the caveats we noted in our response to question 12, regarding integration with regulated debt advice and excessive or inconsistent reviews. (We note, however, that such risks are likely to be lower or less relevant in relation to mortgage forbearance arrangements.)

Q24: Do you agree with our proposed guidance on what we consider to be reasonable steps?

We have no comment at this time.

Q25: Do you agree with our proposals to provide additional guidance at MCOB 13.3.4CG to include taking account of wider indebtedness?

We broadly agree with the proposed guidance. There may be helpful wording that could be introduced to ensure firms support and allow customers experiencing wider indebtedness to access advice and reach repayment agreements, given that not all customers will access the Breathing Space scheme (or a Statutory Moratorium), and those that do may not be able to resolve all repayment discussions within the statutory period.

Q26: Do you agree with our proposal for firms to share income and expenditure assessments with customers where possible?

We broadly support the proposal. We note elsewhere that an expectation of more detailed and portable income and expenditure assessments by firms has the potential to cause problems for customers with multiple debts where firms produce assessments that differ from one another or a budget supported by a regulated advice provider. FCA rules should be clear that firms should accept an SFS budget prepared by a regulated advice provider except in exceptional circumstances (such as a clear error).

Q27: Do you agree with our proposal to extend the rule in MCOB 13.3.9R to include customers who have or may have payment difficulties?

We support the proposals to extend record keeping requirements and have no further comment at this time.

Q28: Do you agree with our proposed clarification on recording video calls in MCOB 13.3.9R? Do you agree with our proposal not to extend this to those facing payment difficulties?

We have no comment at this time.

Q29: Do you have any comments on the proposed amendments to MCOB 13.8?

We support the proposals and have no further comment at this time.

Q30: Do you have any comments on the consequential impacts to: a. MCOB 14? b. MCOB 15?

We have no comment at this time.

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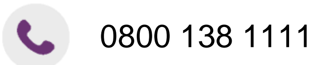
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