Hot TopICS

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COVID 19 – FCA Policy Developments

Introduction

This Hot TopICS seeks to make you aware of two key policy developments from the FCA, brought about as a result of Covid-19, both of which are likely to result in short notice operational changes.

As part of the FCA's continued efforts to support customers impacted by the Covid-19 pandemic, the FCA has issued proposed guidance for insurance firms to ensure the fair treatment of customers. These apply to insurers and product manufacturers as well as brokers.

The proposed guidance covers 2 key areas:

Product Value	Ensuring products continue to offer value and are appropriate for customers taking into account the impact of coronavirus and firms' ability to deliver the benefits promised.
Helping customers in financial difficulty	Help individual customers who may be finding it difficult to pay their insurance premiums or meet their premium finance payments as a result of coronavirus.

If confirmed, the measures to help customers in temporary financial distress will come into force by 15 May and the measures for product value assessments will come into force by the end of May.

Product Value

The proposals impact all those involved in the distribution of commercial and consumer insurance products and in particular firms who have manufactured these products; it does not include those involved in the manufacturer of re-insurance products.

The FCA reiterates that product value is a key aspect of firms' obligations when manufacturing products. With the virus having a temporary impact on the extent to which some customers can use and access benefits from their insurance products, many firms are already exploring how their products are being

impacted by Covid-19 and are taking action. If firms have yet to explore this impact they should do so now.

Examples of the potential impact on product value include:

- Firms are no longer able to provide contractual benefits e.g. boiler cover insurers may not be able to offer an annual service that is part of many policies or medical covers where customers cannot access certain benefits;
- Underlying insured events can no longer happen i.e. liability insurance may temporarily not be relevant for some businesses such as hairdressers, bars and restaurants that are closed as a result of Government interventions linked to Covid-19.

The FCA expects firms to assess the value of their insurance products to customers during this period and to consider appropriate action. The FCA proposes to give firms up to six months to assess this so that it can take into account effects of coronavirus in a more rounded manner.

The FCA clarifies that its expectation of a product level assessment is *"restricted to cases where the **firms or the product itself cannot deliver a benefit, or where the customer cannot make a claim as the underlying event is no longer relevant**. Some firms may choose to go further than this, which [they] would welcome, but do not require. This guidance is not intended to create an expectation that firms should reassess the value of policies at a product level as a result of coronavirus where claims are still possible but the likelihood of a customer making a claim may have changed e.g. a reduction in car usage. There may be some circumstances in which the factors above may have led to a material change in the value of a product for customers in temporary financial difficulties related to coronavirus. In these circumstances, [they] expect firms to consider the value of the product where customers contact them, or where a firm contacts the customer, regarding missed payments."*

Actions may include but are not limited to:

- Changing how benefits are delivered;
- Provision of alternative comparable benefits;
- Refunding some premiums; or
- Suspending monthly payments for a certain period of time.

Firms will also need to consider the impact of changes and ensure requirements within ICOBS are met including provision of appropriate information. The FCA clarifies that where firms are providing refunds or partial refunds to customers at a product level, which do not involve changes to the product itself, it is unlikely that firms would need to treat this as a mid-term adjustment for the purposes of the FCA's renewal or mid-term disclosure rules however the FCA is happy to discuss further with firms where there are concerns.

The FCA are looking for feedback from firms and particularly insurers as to how they will implement this product review in practice and whether the guidance the FCA has provided is sufficiently clear. Firms are to respond with any comments to terence.denness@fca.org.uk by 5pm on Friday 15th May.

Helping customers in financial difficulty

In separate proposed guidance in relation to financial difficulties, the FCA outlines that the virus may also be making it harder for people to afford their insurance and premium finance payments. The FCA requires firms to take steps to help customers alleviate temporary financial distress and maintain insurance cover that meets the customer's current demands and needs.

This guidance should be reviewed in conjunction with the product value guidance as additional and separate actions may be required. It applies to firms within the insurance and premium finance markets and applies to all general insurance products and customers who meet the definition of an eligible complainant i.e. consumers and small businesses. It impacts all methods of payment for insurance including regulated credit, excluded credit agreements e.g. interest free and pay as you go arrangements etc.

The FCA clarifies that the guidance impacts customers who are having financial difficulties directly as a result of Covid-19 – where customers were in financial difficulty prior to the pandemic, the FCA's existing rules in relation to forbearance apply.

When firms should consider taking action

The guidance states that there are a number of circumstances where firms should consider actions to support customers who may be in financial distress. These might include:

- Where a customer contacts the firm because they are having difficulty making repayments, wishes to reduce cover (whether having paid in-full or on a monthly basis) or has made enquiries about their insurance cover in the light of coronavirus;
- Where the firm has reasonable basis for knowing or has identified (or should reasonably have identified) that there are customers who are suffering financial distress (e.g., those who have missed payments during the crisis period), even where those customers have not contacted the firm.

Actions firms may take

Firms will have a range of options they can consider appropriate to the policy. This might include a mixture of the following:

- Reassessing risk profiles and adjusting cover or premiums as a result or providing alterative products e.g. motor insurance customers might not be using their vehicle at all or might no longer be using it for business purpose or businesses may not need certain cover for a period of time;
- Working with customers to avoid the need for cancellation.

Such considerations may also involve:

- Waiving administration and cancellation fees; relaxing charges or interest incurred for missed payment; reducing premium finance interest rates; extending cooling off periods; and partly refunding premium payments where the whole amount has been paid up front.
- Payment deferrals – The FCA provides specific guidance in relation to this, allowing for deferrals between 1-3 months where other options do not meet the customer's needs.

The FCA states that *"firms should make clear in their communications, including on their websites and apps, the different solutions available to customers, and encourage them to make contact if they are experiencing temporary financial difficulty as a result of coronavirus. Firms should make it as easy to contact them as possible, and consider the needs of vulnerable consumers (e.g., those needing to communicate through channels other than telephone) to ensure all consumers that need help can access it easily".*

The FCA further clarifies that:

- Customers should be able to request a payment deferral at any point after the guidance comes into force, for a period of 3 months;
- There is no expectation that the firm makes enquiries with each customer to determine if the circumstances surrounding a request for a payment deferral are connected with Covid-19;
- A customer will not be liable to pay any charge or fee in connection with the granting of a payment deferral under the guidance;
- A firm should give customers adequate information to enable them to understand the implications of a payment deferral.

The Regulator expects 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. Further:

- Firms are not prevented from continuing to accrue interest charges for customers during a deferral period, but they should not actually seek payment of these until the deferral has ended;
- Firms should reduce the possibility, to the extent possible, of a customer suffering adverse consequence as a result of accepting a payment deferral or a different solution where a payment deferral has been deemed not in the customer's interests;
- The payment deferrals should be regarded as being offered in exceptional circumstances outside of the customer's control. In accordance with the relevant coronavirus Data Reporting Guidance published by the Credit Reference Agencies, firms should not report a worsening arrears status on the customer's credit file during the payment deferral period. However, where additional forbearance is required, for example in the form of waived interest and charges, the FCA would expect this to be reflected in the usual manner;
- Where customers have been unable to reach timely agreement with firms' for a payment deferral because of firms' operational difficulties and subsequently miss a payment which is reported to their credit file, or where they have entered into a similar temporary payment deferral arrangement with their lender as a result of the coronavirus situation which has resulted in a worsening arrears status being reported, the FCA expects firms to work with customers and Credit Reference Agencies to ensure that any necessary rectifications are made to credit files to ensure no worsening arrears status is recorded during the payment deferral period. Firms should also ensure no default or arrears charges are levied in relation to payments missed in these circumstances;
- Where a payment deferral is not considered appropriate, firms should without unreasonable delay, offer other ways to provide temporary relief to the customer in accordance with TCF including but not limited to accepting reduced repayments, or rescheduling the term; waiving missed or late payment fees; permitting a customer to amend their repayment date without any

cost or more favourable forms of assistance if the firm deems this appropriate, including writing off unpaid repayments as well as any associated interest, fees or charges.

What do we need to do now?

The implications of both new guidance publications will need to be considered by firms in relation to their own distribution model, customer base and premium finance arrangements. ICS fully recognises that there are commercial repercussions for firms in terms of cashflow and profitability. Although there is nothing in the FCA publications to reference this, the guidance does make clear on which basis firms are expected to take action.

With regard to situations of financial difficulty, a firm is expected to take action where a customer contacts the firm or the firm has reasonable basis for knowing or has identified that it has customers who are suffering financial distress.

With regard to product value, the assessment should be undertaken on products where it is not possible to provide some or all benefits as intended and/or customers cannot make a claim due to the current restrictions and/or underlying insured events can no longer happen.

- Determine how the firm can readily identify customers in financial difficulty
- Where a firm has responsibility for product manufacturing, establish that the benefits provided by the policy can still be claimed upon. Where they cannot, due to the Covid-19 restrictions, liaise with insurers to agree the most appropriate course of action.
- Where a firm is a distributor, prepare options available to assist customers who need to amend the covers provided by their policy/ies
- Liaise with premium finance providers regarding the logistics of payment deferrals
- Document actions taken and where appropriate update risk registers and reference in senior management meetings.

ICS are here to help in any way we can and based on the above you may very well feel that it is more beneficial to discuss FCA guidance on a 121 basis with us. In this regard please contact your usual compliance consultant or the Helpline and we will be very happy to discuss the implications with you.

Further information

Product Value - https://www.fca.org.uk/publications/guidance-consultations/product-value-coronavirus-draft-insurance-firms
Customers in financial distress - https://www.fca.org.uk/publications/guidance-consultations/coronavirus-customers-temporary-financial-difficulty-draft-insurance-premium