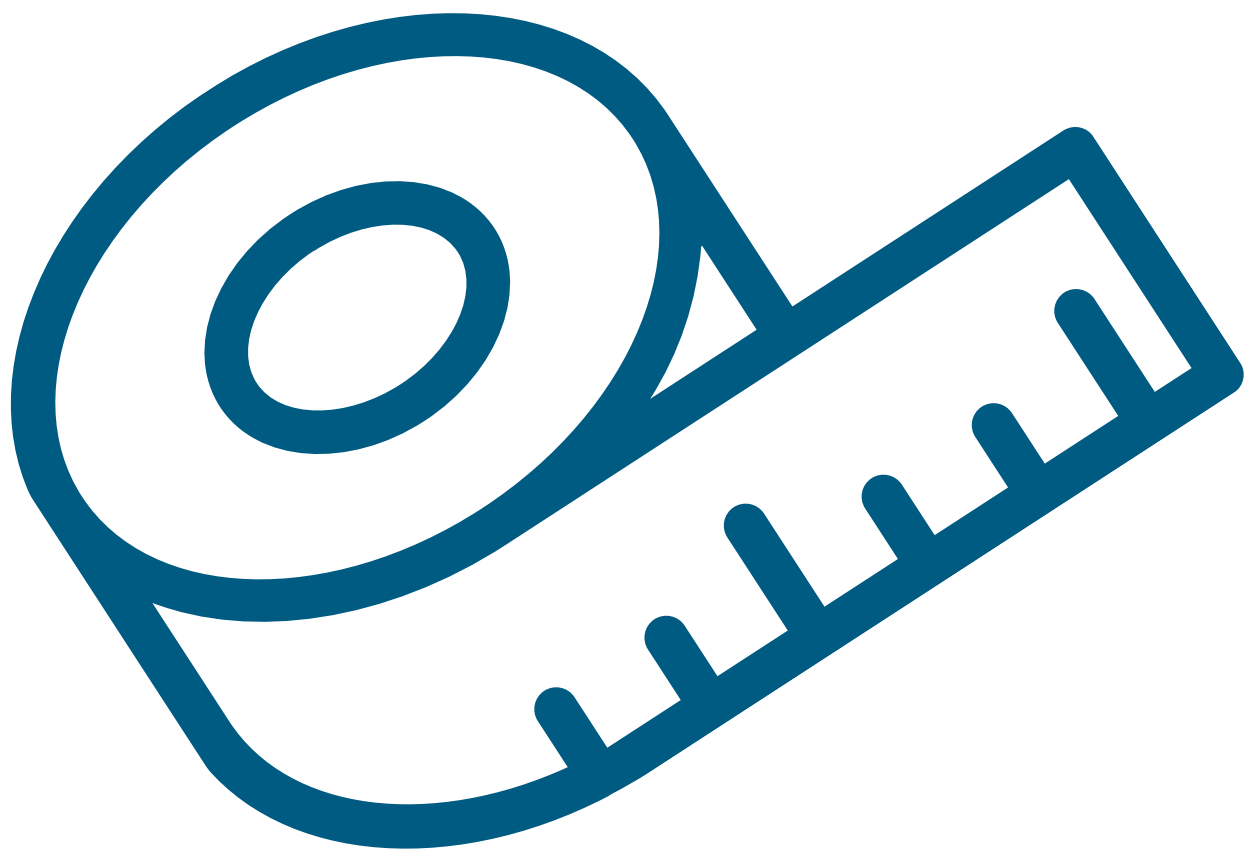


Tailored support and the need for flexibility in forbearance



July 2021

Disclaimer

Whilst the examples used in this document are based on real incidents CSA member firms have handled, names and other minor details have been altered to protect the anonymity of the individuals involved. It should also be noted that the measures implemented and decisions taken by the CSA member firms that provided these examples are unique to the circumstances of that particular case, and may also have been influenced by other factors. CSA members will endeavour to find mutually agreeable solutions with individual customers appropriate to their particular circumstances; accordingly the solutions described in this document may not be offered by all members and approaches may vary from firm to firm.

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Introduction

One of the core tenets of the collections sector has long been the importance of understanding the customer's circumstances and finding mutually agreeable solutions. Both firms and customers must regularly respond to changing circumstances, so it is essential that firms are able to act flexibly in order to find ways to help customers based on their circumstances.

During the Covid-19 pandemic, we saw the regulator introduce prescriptive forbearance requirements. It is entirely understandable that the regulator would take such an approach facing unprecedented circumstances, but we are concerned that this could preface a move to a more prescriptive approach to forbearance in general.

There are undeniably positives that can come from well-designed and considered prescriptive forbearance, but, as illustrated by some of the examples in this paper, it is easy to miss the mark and cause unintended customer detriment. Equally, unguided or wholly unregulated flexibility when it comes to forbearance could lead to negative outcomes if rogue firms sought to exploit such latitude. However, we believe that in the current regulatory framework, such firms would be failing to satisfy the FCA's principle requiring the fair treatment of customers and such poor practice is already well covered by the regulator.

Rather than simply set out our concerns about a move to prescriptive forbearance, with this paper we wanted to illustrate the importance of flexible forbearance and firms' ability to understand a customer's circumstances and tailor an approach to support the customer, whilst also exploring some of the problems that can be generated by prescriptive interventions around forbearance and supporting customers.

With that in mind, we have collected some case studies from the frontline of some of our member firms, demonstrating how firms have been able to help customers with a flexible approach to forbearance under current rules and guidance¹. Alongside this, we have included some examples illustrating the pitfalls of poorly designed prescriptive intervention.

We would like to express our gratitude to all CSA members who contributed to this paper.

¹ Names and minor details have been amended in the interest of data protection.

Tailored forbearance



Case study

John had a student loan debt with **Firm A** and was making monthly payments of £38 against the debt, which was in line with his income and expenditure.

Unfortunately, **John** was made redundant due to the pandemic and was unable to afford his monthly payments of £38. As a result of the redundancy, he was struggling financially and trying to find effective ways to cover his monthly expenses.

He contacted **Firm A** to explain his situation and to see whether they could provide any support.



What did the CSA member do to help?

Firm A took note of **John's** situation and offered him two different options to help with the circumstances he faced:



he could defer his student loan (which would entail no payment over the next 12 months and the maturity date extended by 12 months), or



he could take a three-month payment deferral.

This enabled the customer to consider the forbearance that would best suit his circumstances.

In the end, **John** opted to take the shorter payment deferral, secure in the knowledge that the option to consider deferring the student loan was still available if circumstances had not improved at the end of the payment holiday.

This approach empowered the customer to select the most suitable option for him whilst also providing the possibility of an alternative, longer-term option if necessary.

Prescriptive intervention

Debt Respite Scheme Regulations 2020

The recently-implemented Debt Respite Scheme Regulations 2020 are an example of prescriptive measures intended to help consumers, where the design and absence of flexibility could cause issues for individuals, debt advisers and creditors.

The Debt Respite Scheme Regulations 2020 introduce statutory breathing space for individuals in arrears. There are two aspects to the scheme:



the breathing space moratorium, which entitles an eligible individual to 60 days' breathing space



the mental health crisis moratorium, which entitles an eligible individual to breathing space for the duration of their crisis and recovery, and a further 30 days beyond.

Despite the positive aims of the Regulations, they have nevertheless raised concerns about unintended consequences.

For example, shortly after implementation, there were reports of automated referrals to the scheme, potentially bypassing any assessment of eligibility or suitability. There are a range of eligibility requirements and restrictions built in to the scheme, including only being permitted a single breathing space moratorium within a 12-month period. For those accessing the scheme through an automated referral, this could leave them ineligible for the scheme at a

later, more suitable point in time.

There remain questions around whether use of the scheme could constitute acknowledgement of a debt under the Limitations Act 1980, thereby extending the period by which a debt can be enforced. Whilst this may be welcomed by creditors, it may leave advisers hesitant to recommend the scheme if a client has debts close to becoming statute barred. A scheme designed to support customers facing financial difficulties could end up weakening their position.

Some of the eligibility requirements may cause advisers to question the scheme's suitability for their clients. For example, individuals must maintain payments against certain on-going liabilities and failure to do so could see the moratorium cancelled. Those who would benefit most from the scheme are often in financial difficulties that prevent them from meeting the majority of their obligations, so may fall at the first eligibility hurdle.

One of the most obvious pitfalls of the scheme is the lack of necessity for a statutory solution - breathing space moratoria were already widely available to customers, as they have long formed a part of most firms' forbearance measures.

The Insolvency Service must therefore navigate around the inflexibility of the Regulations in an effort to make the best of the scheme and help all parties understand how to best support individuals whilst meeting their obligations under the Regulations.

Tailored forbearance



Case study

Firm B contacted **Gary** in February 2021 about an outstanding balance.

Gary explained that he works as a self-employed painter and decorator, but the pandemic had prevented him from working since December 2020. As he had only been self-employed for a short period of time, he was not eligible for government support and was therefore reliant on Universal Credit and family support.

In addition to this, **Gary** had no savings he could rely on either to help him during this period.



What did the CSA member do to help?



When **Gary** informed **Firm B** about his circumstances, they firstly signposted him to free debt advice, particularly Business Debtline.



They also advised him that his account would be placed on hold for 90 days.

With no government support available to the customer, **Firm B** recognised it would be some time before **Gary** may be in a position to discuss repayment arrangements. **Firm B** therefore put a lengthy hold on the account, giving the customer ample time to seek advice and to ensure he can use Universal Credit to meet priority obligations until he is able to work again.

Prescriptive intervention

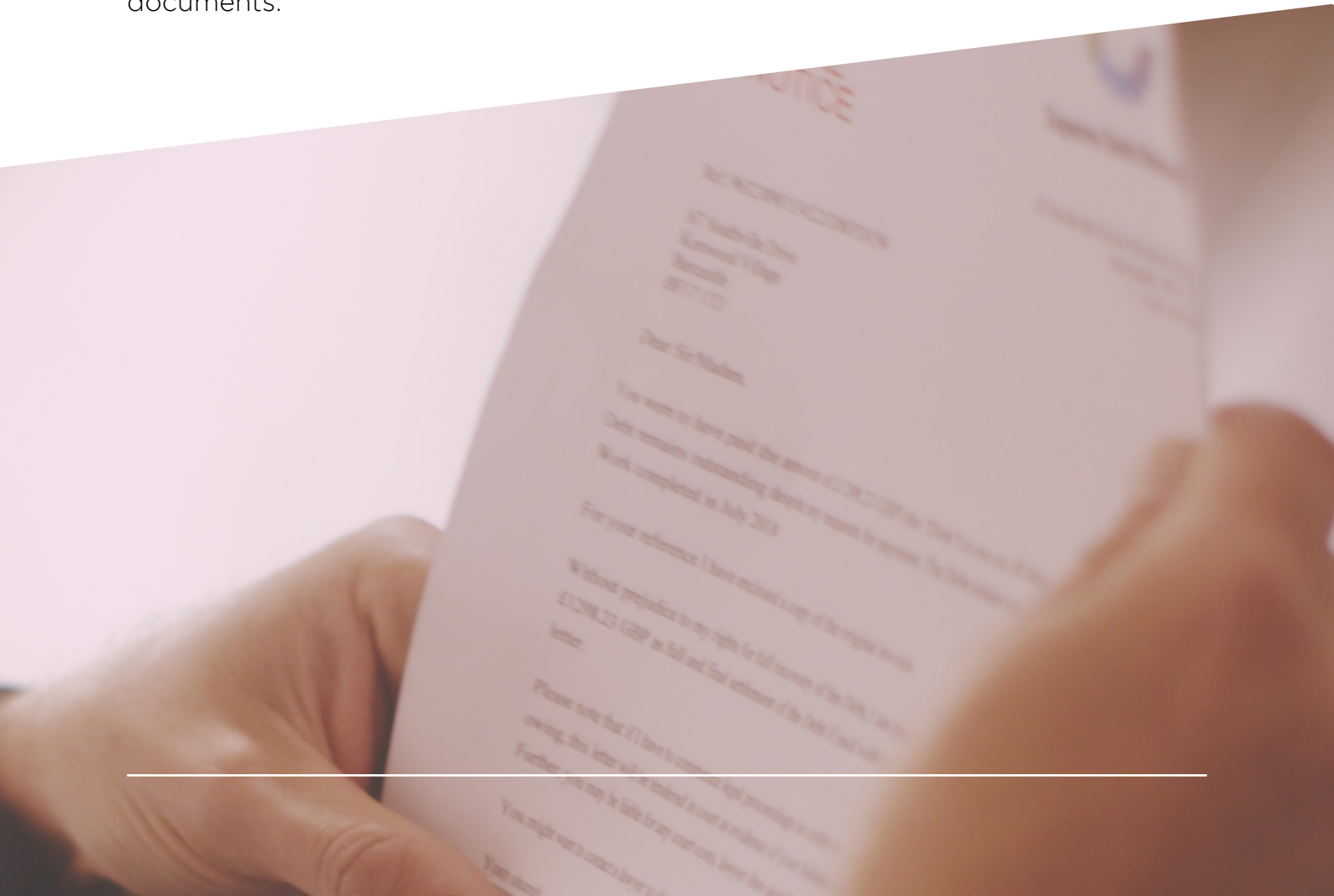
Pre-Action Protocol for Debt Claims

The Pre-Action Protocol for Debt Claims sets out the conduct required by organisations prior to pursuing litigation for the recovery of a debt. The Protocol was developed between 2015 and 2017, and went through a range of amendments over that period.

In an early draft of the Pre-Action Protocol for Debt Claims, there was a proposed requirement that claimants would have to provide large bundles of documentation to a customer before they were able to pursue litigation. That bundle would have had to include credit agreements, statements of account, terms and conditions, as well as a range of court documents.

Although the goals of the measure were laudable, it would likely have had negative consequences for all parties. The proposal was eventually withdrawn, as it was recognised that this sort of approach would be more likely to overwhelm a recipient, particularly one who is vulnerable. It was also unnecessarily onerous on claimants, not to mention significantly environmentally-unfriendly.

Ultimately, the requirement was removed and, in its place, a more flexible approach was incorporated into the process, whereby the recipient has given the option to request relevant documentation. Being a legal process, it is still prescriptive, but now allows some flexibility around the provision of documentation, which is beneficial both to customers and firms.



Tailored forbearance



Case study

Prior to the pandemic, **Anna** had been consistently making full payments on a regular basis to **Firm C**, with no prior late or missed payments.

However, in March 2020, **Anna** contacted **Firm C** to advise that her income had been impacted by the pandemic and this would affect her ability to maintain her regular payments. She asked **Firm C** whether there was any support or assistance they could provide during this period.



What did the CSA member do to help?

Anna was initially given the option of a three-month payment holiday through to June 2020.

At the end of this payment holiday period, she was informed of the capitalised amount and the new contractual monthly payment. She was able to maintain this new payment arrangement initially and continued to pay on time. However, in September 2020, **Anna** made contact again to advise that her income had once more been affected by the pandemic and her October payment would be delayed.

At this point, she was given different forbearance options, including:



a full calendar month where she could make the overdue payment at any point in October, or



she could take a second payment holiday.

In the end, **Anna** made the payment in October, at a later date than it was due.

This tailored approach to forbearance benefitted the customer in that she had the flexibility to select the most suitable and sustainable solution, taking into account her current individual circumstances.

Prescriptive intervention

Covid-19

In response to Covid-19, the FCA introduced requirements that entitled any customer to obtain a payment deferral on a range of credit products, including mortgages. As reported by UK Finance², the number of customers who took up a payment deferral was substantial. And this undoubtedly included people who were in a position to maintain payments against their credit products and who did not in fact need a payment deferral.

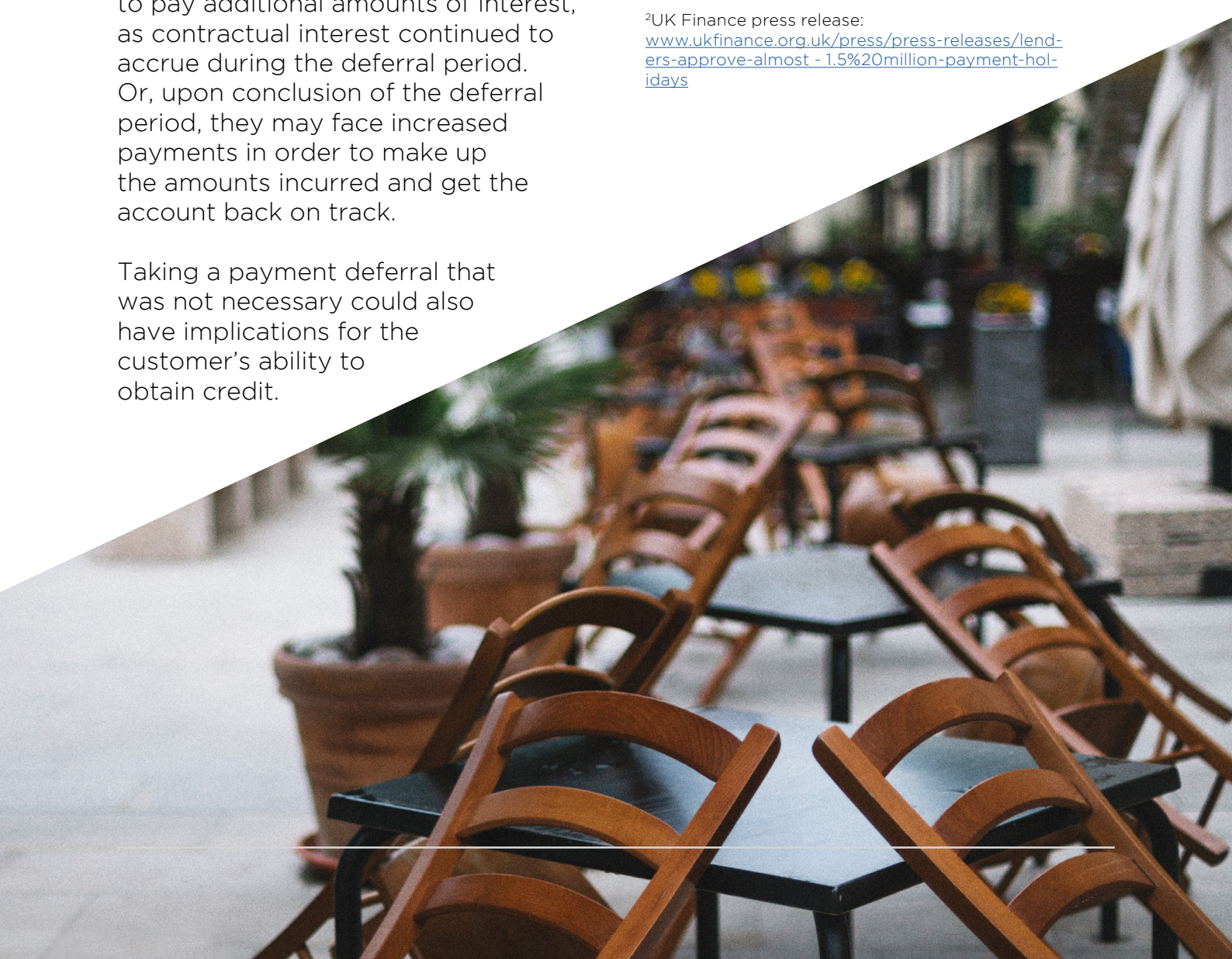
As a consequence of this, many of these customers will potentially have to pay additional amounts of interest, as contractual interest continued to accrue during the deferral period. Or, upon conclusion of the deferral period, they may face increased payments in order to make up the amounts incurred and get the account back on track.

Taking a payment deferral that was not necessary could also have implications for the customer's ability to obtain credit.

Although payment deferrals are not reported on someone's credit file, we know that lenders are considering other pieces of information to make up for that absence in credit reference agency information; potential lenders could therefore discover that an applicant has had a payment deferral. This could raise questions about their borrowing capacity and ability to repay.

Similarly, the restrictions on credit reporting have impacted the integrity of CRA records, which now have a substantial period where records do not accurately reflect the individual's circumstances at the time.

²UK Finance press release: www.ukfinance.org.uk/press/press-releases/lenders-approve-almost-1.5%20million-payment-holidays



Tailored forbearance



Case study

Susan was in arrears with **Firm D** but she had been maintaining a payment plan for several months.

Shortly after the start of the pandemic, the payment plan failed. **Firm D** contacted **Susan** to find out what had happened. She explained that she was unable to work due to long-term health issues. Furthermore, her husband, **Stephen**, was self-employed but the pandemic had prevented him from working.



What did the CSA member do to help?



Initially, **Firm D** granted **Susan** a 60-day payment deferral and agreed to contact her for an update after those 60 days.



When the 60 days had lapsed, **Firm D** contacted **Susan** to see how things were going. She explained that Stephen was still struggling to maintain consistent work and they were just about maintaining payment against priority bills. She hoped that they may be in a position to resume payments a month later. With this in mind, **Firm D** held the account for a month and agreed to contact **Susan** again a month later.



One month later, **Firm D** made contact and, at **Susan's** request, they set up a repayment plan. Unfortunately, this came too soon for **Susan** and **Stephen**, and the payment plan failed.



Firm D again put the account on hold to give **Susan** and **Stephen** time to seek advice and keep up with their priority bills. At the end of this further hold period, **Susan** advised **Firm D** that their income had taken another hit, because Stephen was now hospitalised. **Susan** was therefore looking for work and had an interview lined up. The account was once more placed on hold.



When **Firm D** contacted her sometime later to see how things had progressed, there had sadly been no improvement – **Stephen** remained unable to work and the couple were continuing to build up arrears. **Firm D** offered her a more substantial hold period, but **Susan** insisted it only be held for 30 days.



30 days later, **Firm D** spoke to **Susan** again and found out that she was still unable to find work, **Firm D** this time held the account for 90 days instead.



Eventually, **Susan** was able to find work. When she told **Firm D** this, rather than immediately arrange a repayment plan, they opted to give her some additional time to get settled in the role before discussing any further payment arrangements.

Firm D repeatedly responded to **Susan and Stephen's** changing circumstances, affording them time and space to seek advice and assistance. Although they agreed to put in place a repayment arrangement, when it failed, they continued to offer **Susan** time and space to respond to her changing circumstances, recognising the challenges that Susan and Stephen had been facing.



Prescriptive intervention

Consumer Credit Act 1974 (CCA) statutory notices

Under the Consumer Credit Act 1974, firms are required to provide a range of statutory notices to customers in relation to their account, including annual statements of accounts, notices of sums in arrears and notices of default.

Although not strictly forbearance, the requirement to send statutory notices under the CCA 1974 is designed to make sure customers are informed about the status of their debts. But the prescriptive requirements in the legislation have often meant that customers, particularly those that are vulnerable or experiencing mental health difficulties, are intimidated or feel harassed by the required language and content of the notices.

The absence of flexibility also means that firms are unable to phrase information in clearer, more easily intelligible and more customer-friendly language.

Some of the legislative requirements around language and content were changed in December 2020 to soften the notices, but there remain questions around how helpful the notices are in their current forms.



Conclusion

It is apparent from the stories we have heard around flexible forbearance that the ability to tailor solutions to a customer's circumstances and respond flexibly to both minor and significant, and short-term and long-term changes, is essential to providing the necessary support to those in debt.

Given the FCA's robust messaging in recent years that the fair treatment of customers and responding to vulnerability should not be tick-box exercises, we are firmly in support of affording firms the flexibility to tailor solutions and approaches to customers' circumstances. Not only would a move to prescriptive forbearance measures potentially mark a return to compliance-as-tick-box-exercise, the nature of the prescriptive forbearance could have unintended consequences for consumers and the market, such as increasing levels of non-performing loans, irresponsible lending where credit files have significant omissions, exclusion from credit, perpetual payment deferrals and unsustainable levels of repayment.

A move from flexible forbearance towards prescriptive forbearance would have a fundamental impact on both customers and the market, and could risk long-term detrimental financial impact for both.

With several consumer-focused initiatives on the horizon, such as the statutory debt repayment plan and the prospect of a Consumer Duty, it is imperative that flexibility and the capacity to tailor solutions to a customer's needs and circumstances are built into their design, and that inadvertent risks to consumers are truly considered and addressed.

We remain supportive of the current approach to forbearance set out in the regulator's rules and handbook, and we would encourage the regulator (in collaboration with the industry) to review and reshape the nature of forbearance moving forward, with a focus on developing a broader range of flexible forbearance options.

Annex

In our efforts to gather material for this paper, we identified many stories illustrating the beneficial impact of flexible forbearance. Please find below some further examples of the positive outcome that can come from flexibility.



David and Margaret



David and Margaret held a joint account with a balance of £83k and 100 months left on a fixed term mortgage contract. However, both of them had been impacted by the pandemic and were therefore offered an initial six-month payment holiday, in accordance with the FCA's regulatory requirements.

Unfortunately, upon expiry of the payment holiday, both still faced challenges. **David** had been placed on furlough by his employer and Margaret was vulnerable, suffering from extreme anxiety and depression which had affected her ability to work. Furthermore, **Margaret** had negative disposable income and was unable to maintain the required monthly contractual payments.

What did the CSA member do to help them?



Firm E agreed a three-month concession with **David and Margaret**, which temporarily reduced their payments to zero, so that they could seek further free debt advice. Additionally, upon resumption of payments, the contractual monthly payment was also reduced from £790 to £250.



Terrence



Terrence was in arrears with **Firm F**. He contacted them to advise that he was in the process of claiming Universal Credit. He had previously been a carer for his mother, who had since moved into a nursing home.

He also explained that during this period, he had incurred some arrears on priority bills, but his daughter, **Jenny**, was spending some time helping him to organise his finances.



What did the CSA member do to help him?

Firm F, recognising the lengthy time it can take for Universal Credit to be paid (5 weeks from application), advised **Terrence** that they would put the account on hold for 60 days.

In view of **Terrence's** circumstances and the wait period for any Universal Credit payment, **Firm F** gave him additional time and space without contact, not only so that he could receive payment of Universal Credit paid, but also so that **Jenny** could provide assistance in organising his finances.



Julie



Julie had a payment arrangement in place with **Firm G**, but shortly after the start of the pandemic, the payment arrangement suddenly failed.

Julie contacted **Firm G** to explain that the pandemic and some personal issues were significantly affecting her mental health, and therefore her ability to maintain payments.



What did the CSA member do to help her?

Firm G put the account on hold for 60 days and referred **Julie** to their internal support team to make sure she received a tailored approach.

In granting **Julie** 60 days' breathing space, it gave her time to organise her finances and an opportunity to seek advice if required. Referral to the internal support team also meant that **Julie** had a direct contact she could engage with and meant that **Firm G** could provide a tailored approach to her on-going circumstances.



Yusuf



Firm H contacted **Yusuf** during the Covid-19 pandemic to discuss his outstanding balance. When they spoke to him, he advised that he was not presently in the UK. He also had no idea when he would be permitted to return. He had left the UK due to financial struggles and lack of employment. He was now in Turkey and was relying on support from friends and family.



What did the CSA member do to help him?

During the period that **Yusuf** was out of the UK, **Firm H** kept his account consistently on hold and they made regular efforts to maintain contact with him throughout the period, to understand if and how his circumstances had changed.

Firm H had to tailor its response to **Yusuf's** particular circumstances and his inability to return to the UK throughout the pandemic, recognising that as long as he remained out of the UK, he had no capacity to pay.



Gemma and Alan



Gemma contacted **Firm J** to discuss her debt and explained that she was presently unemployed due to her health circumstances. Alongside this, her partner, **Alan**, was currently furloughed because of the pandemic's impact on his job.

Furthermore, neither **Gemma** nor **Alan** have savings available and have not been able to access any additional support from family or friends.

In an effort to find a solution, **Gemma** had sought advice from Citizens Advice and they were in the process of appealing for her Personal Independence Payment (PIP), which she was informed would take up to 12 weeks.



What did the CSA member do to help them?

In order to give **Gemma** ample time for her PIP appeal to be completed by Citizens Advice, **Firm J** put in place a 90-day hold, during which time all activity and contact would cease.



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