

3 August 2020

Feedback to consultation on statement from the Assistant Minister for External Relations, Connétable Richard Buchanan: Guidance for consumers and their providers of credit and related services during the Covid-19 crisis

On 10 June 2020 Government consulted on guidance on reasonable conduct in the consumer credit sector in the context of financial hardship caused by the Covid-19 pandemic.¹ Government is grateful to those who took the time to respond to this consultation, following which a number of amendments have been made. The changes are tracked in Appendix 1 to this document, for ease of reference.

Feedback was submitted by six respondents. This consisted of two banks, two non-bank lenders, a lawyer acting in an independent capacity, and another lawyer who made representations through Jersey Finance. Feedback was broadly supportive, with some general reservations from a lawyer and a bank.

A lawyer noted that it is important to clarify that the guidance is targeted at local consumers rather than businesses in the local or international markets. This is amended within the statement, consumers now being defined as Jersey resident individuals.

A bank respondent rightly highlighted that the statement is not and cannot be a proxy for due legislative process. The statement outlines guidance on reasonable behaviours that providers and consumers might adopt during the economic impact of Covid-19, in particular when consumers face financial difficulties. It is not a proxy for due process and the ability of parties to enforce contractual rights.

Whilst welcoming the guidance, another bank suggested that most banks are highly regulated and can benefit from the policies, processes and best practices of their parent companies. In this light it was suggested that the guidance is more relevant to non-bank lenders.

One non-bank lender requested that “high interest rates” be defined. This is not possible to do in a standardised way in a guidance statement, and any judgement would depend on the facts of the case, considering the type of loan and affordability, amongst other factors. There are various references to the concept of high interest rates in Jersey law, generally in the context of companies, for example Article 179 of the Companies (Jersey) Law 1991.

A lawyer suggested that the guidance in relation to credit providers is a deterioration of Jersey being a “creditor friendly” jurisdiction and contract law principles. It was proposed that an alternative approach would be to encourage consumers facing financial difficulties and their providers to discuss in good faith for a limited period of time whether there is an acceptable solution to both. In response to this feedback, the importance of counterparties to a contract servicing their obligations is further emphasised, as is the importance of communication between lenders and borrowers. The guidance does not propose new legislative obligations or seek to interfere with contractual agreements. Rather, it outlines guidance regarding

¹ <https://www.gov.je/News/2020/Pages/ConsumerLendingConsultation.aspx>

reasonable behaviours that providers and consumers might adopt during the economic impact of Covid-19, in particular when consumers face financial difficulties.

The same respondent requested that the guidance lists examples of when a lender might reasonably deviate from the guidance. As the guidance is intended to outline reasonable steps Jersey resident individuals and providers might take in servicing consumer credit agreements, in particular when consumers suffer financial hardship, it is not proposed to list examples of where alternative arrangements might be appropriate. In any event, such a list could not be exhaustive. This will depend on the facts and the contract, so the a more general statement is maintained noting that the guidance does not interfere with contractual agreements made in accordance with Jersey laws and regulations, and enforcement may sometimes be necessary.

Specific points amended in the final guidance, based on feedback received, include:

- Further clarification that agencies such as CIFO and the Jersey Trading Standards Service, and the courts, would refer to relevant legislation in their decision making
- Restriction of the guidance to Jersey resident individuals to ensure the focus remains on those facing financial hardship, and does not apply to credit agreements with local or international businesses
- Further clarification that the guidance does not interfere with contractual rights, and that certain disputes may need to be settled by the courts
- Further clarification that where able, consumers should continue to make debt repayments as they fall due, and where they are aware that they will struggle to make payments they engage with the lender to discuss options in good faith
- As not to interfere with default interest clauses which provide an incentive for debtors to make payments, wording has been amended to state that such clauses should be clearly outlined in the agreement, clearly disclosed, clear as to how interest will be calculated, and otherwise fair and reasonable in the circumstances
- Guidance to contact all customers is replaced with customers who the lender has reason to believe may be in financial difficulty
- Clarification of the process for referring to the Channel Islands Financial Ombudsman (CIFO), noting that customers should be made aware of their right to escalate a complaint rather than be automatically referred to CIFO
- Removal of implication that brokers and referrers should carry out a comprehensive view of the market and disclose all fees, based on feedback that this has limited relevance to economic impacts of Covid-19 on households
- Amended wording to clarify that reference to Trading Standards, CIFO and Citizens Advice Jersey may not be appropriate in all customer communications

**STATEMENT FROM THE ASSISTANT MINISTER FOR EXTERNAL RELATIONS, CONNÉTABLE
RICHARD BUCHANAN**

**GUIDANCE FOR CONSUMERS AND THEIR PROVIDERS OF CREDIT AND RELATED SERVICES
DURING THE COVID-19 CRISIS**

As a result of Covid-19-related measures some consumers in Jersey will be experiencing financial difficulty and may struggle to meet payments on loans, mortgages, hire purchase agreements and overdrafts. The wider economic situation could also lead to a significant increase in people considering borrowing money, some of whom will be new to this process. At the same time, the suspension of sittings in the Petty Debts Court and an expected increase in cases being considered by Jersey Trading Standards and the Channel Islands Financial Ombudsman (CIFO) may delay disputes between businesses involved in the lending market and consumers being settled in the normal way.

Consumers should never be encouraged or enabled to enter into inappropriate credit arrangements or debt restructuring arrangements, which they may not be able to afford and which carry with them high interest rates and/or high penalties on default. This is particularly important during this period of COVID-19.

The principles underlying this guidance are the legal protections afforded to Jersey consumers from:

- commercial practices which are actively misleading, including misleading omissions of information
- aggressive commercial practices

Jersey legislation and codes of practice and conduct require those businesses involved in the lending market to adhere to fair and reasonable practice in legitimately pursuing their rights against consumers in Jersey.

Businesses in the lending market should treat their customers fairly and reasonably and take appropriate steps to work with customers who are facing financial difficulties. Advertising and promotional material should be clear, fair and not mislead. Customers should be fully aware of, and understand, the terms under which they are borrowing money and be confident that they have the ability to repay the debt within the agreed terms.

This guidance sets out reasonable behaviour between businesses in the lending market and their consumers in the light of current circumstances. It has been developed taking into consideration the statutory roles of agencies such as CIFO and the Jersey Trading Standards Service, and the courts, who will reference the appropriate underlying legislation and regulations in performing their responsibilities. ~~which may be referred to by those considering disputes in due course. It has been developed taking into consideration the statutory roles of agencies such as CIFO and the Jersey Trading Standards Service, and the courts.~~

This guidance operates in respect of the following areas:

- a) Consumer Lending
- b) Debt Collection
- c) Loan Brokerage/Referral
- d) Debt Counselling
- e) Disclosure of Complaints Mechanism

This guidance applies to persons or businesses who:

- a) lend to consumers by way of business
- b) carry out debt collection
- c) hold themselves out to offer loan brokerage or referral services
- d) provide debt counselling

For the purpose of this guidance, a consumer is a Jersey resident individual ~~person or business~~ who is, has previously, or is considering borrowing money from someone in the business of lending, or is subject to an associated activity such as debt counselling, debt collection, or loan brokering. This guidance does not apply to lending to businesses or international transactions.

Agreements between consumers and businesses in the lending market and its associated activities, which are caught by this guidance, may be written or verbal.

Consumers should be aware of their rights and responsibilities in accordance with Jersey law and the relevant codes of practice, including in particular:

- [Consumer Protection \(Unfair Practices\) \(Jersey\) Law 2018](#)
- [Consumer Lending Code of Practice](#)
- [General Code of Conduct for Debt Collecting](#)

This guidance does not seek to interfere with normal contractual relationships between businesses and their customers and the rights to enforce contracts, or release debt obligations that are due. It is important that businesses and consumers act in accordance with the contract agreed. It is recognised that there may be cases where deviation from the general guidance outlined may be necessary, and certain cases may ultimately be resolved by the courts. Rather, this guidance sets out appropriate treatment and behaviour that both parties should reasonably adopt in the light of the Covid-19 crisis.

This guidance does not apply to the activities of Citizens Advice Jersey or the Viscount's Department.

It is expected that businesses will work with consumers, using this guidance as the basis to settle disputes to the greatest extent possible. In determining the reasonable behaviour of parties, alongside this guidance, bodies such as the Jersey Trading Standards Service and the Channel Islands Financial Ombudsman (CIFO) will take into account a provider's observance of the practices set out in relevant codes and legislation as well as recent industry

statements,² particularly for complaints arising during this period. Legal action should be considered very much a last resort.

This guidance applies until further notice.

Consumer Lending

Lending is when a business gives money to an individual in exchange for the amount being repaid at a later date, often with interest or charges added. This could include, but is not restricted to, personal loans, mortgages, hire purchase agreements and overdrafts.

Consumers should:

- Be aware of their current financial needs, including by drawing up a monthly household budget that reasonably reflects their necessary expenses during this crisis³
- Be aware of their current financial position including their incomings, savings and outgoings, sources of income, and current repayment obligations
- Carefully assess the impact of the current crisis on their household finances and their ability to make debt repayments as they become due
- Think carefully before making use of any debt relief measures offered by their provider and should only do so if they need immediate help
- ~~Consumers that are still able to make payments as they come due should continue to do so~~ Ensure that where they are able, they continue to make debt repayments as they become due
- ~~Consumers should~~ investigate what other forms of financial support may be available to them during COVID-19
- When becoming aware that they will struggle to make debt payments, immediately engage with the lender to discuss the options available in good faith
- Raise any complaints against their provider quickly, directly with the provider. Where the complaint is unresolved, or the consumer is not satisfied with the outcome, complaints can be referred to CIFO.

Providers should:

- Be sympathetic to a customer's financial difficulty and take reasonable steps in the circumstances to accommodate their temporary financial distress through such mechanisms as:
 - Interest only options for a set or open period to reduce the amount of required regular payments
 - Extension of loan repayment periods to reduce the amount of required regular payments

² Banks in Jersey have published statements outlining the support available to customers experiencing financial distress, and the Jersey Bankers' Association has provided guidelines for customers [here](#).

³ The Jersey Consumer Council Budget Planner is a helpful tool to calculate household budgets:

https://www.jerseyconsumercouncil.org.je/wp-content/uploads/2015/11/17345B_Budget_Planner_A4-8pp-copy.pdf

- Payment holidays of a reasonable duration in the circumstances, ~~currently at least 3 months~~
- Refrain from ending the provision of credit for those experiencing financial difficulty ~~whenever possible~~ where doing so would be detrimental to the borrower
- ~~Where necessary, penalty fees or penalty rates of interest due to temporary inability to meet debt obligations should be clearly outlined in the agreement, clearly disclosed, and clear as to how it will be calculated, otherwise fair and reasonable in the circumstances~~ Refrain from charging penalty fees or penalty rates of interest due to temporary inability to meet debt obligations as they become due
- Refrain from refinancing existing debt on terms that are unsuitable or, wherever possible, more onerous than their current arrangements
- ~~Refrain from enforcing~~ Only enforce repayment or seeking a court judgment, ~~wherever possible, from against~~ customers facing financial difficulties as a last resort, having exhausted alternative options (it is noted that where the debt is considered unrecoverable this may be appropriate)
- Use ~~plain~~ language which is fair, clear and not misleading in all correspondence and agreements to ensure any new, temporary or replacement credit arrangements are clearly understood by the borrower
- Where in the best interests of the borrower, refer borrowers in financial difficulty to free and independent sources of debt counselling such as Citizens Advice Jersey and provide the borrower with an explanation of how they may be able to assist and the appropriate contact information
- Ensure that consumers, making use of any of the debt relief measures offered by their provider, will not have their credit file affected inappropriately, giving regard to the approach taken by the UK Financial Conduct Authority⁴
- ~~Proactively contact existing customers to advise them to get in contact if they are in~~ Where the lender considers that customers may be in financial difficulty, proactively contact such customers to explain how they may be able to assist, and to provide contact details for free and independent debt counselling services such as Citizens Advice Jersey or budgeting advice from organisations such as Community Savings Limited (CSL)
- ~~Refer~~ Ensure that consumers are made aware of their right to refer all unresolved consumer complaints to the Channel Islands Financial Ombudsman (CIFO)

Debt Collection

Debt collection is the process where a business pursues the payment of debt owed by borrowers, usually after they have fallen due and not been paid. Debt collection businesses often act as an agent of a lender.

Consumers should:

⁴ <https://www.fca.org.uk/news/press-releases/fca-confirms-temporary-financial-relief-customers-impacted-coronavirus>

- ~~Ensure that where they are able, they continue to make debt repayments as they become due~~
When able, pay their debts as they come due
- ~~Consumers should~~ eCooperate with legitimate debt collection agencies to find a reasonable solution to meet their obligations under the current circumstances
- ~~Consumers should~~ eClearly explain how the current circumstances are likely to affect their ability to meet their debt repayment obligations over the COVID-19 period and afterwards

Providers should:

- Conduct themselves in accordance with the [General Code of Conduct](#), which outlines a debt collection agency's responsibilities. Providers could be individuals, professional firms or businesses involved in debt collection in Jersey
- In considering compliance with Jersey Law and the General Code of Conduct, conduct themselves in accordance with the spirit of the common principles of practice set out for members of the UK's Credit Services Association (CSA), and in particular Common Principle 3, of the [CSA Code of Practice](#), relating to dealing with customers in vulnerable circumstances and financial difficulties
- Ensure that consumers making use of any of the debt relief measures offered by their lender will not have their credit file affected inappropriately, giving regard to the approach taken by the UK Financial Conduct Authority⁵

Loan Brokerage and Referral

A loan broker or referrer seeks to match those who wish to borrow money with those who wish to lend money.

Some brokers might incorrectly hold themselves out to be independent, implying that they are seeking the best deal for the borrower, despite having close links with those lenders to whom they are matching borrowers. In these circumstances such businesses should not be holding themselves out to be a neutral broker, and should be disclosing their relationship to the lender.

Consumers should:

- Make sure they know what the broker/referrer will, and will not do for them
- Make sure they know which potential providers of credit the broker/referrer will contact to inquire about the availability of credit on their behalf
- Make sure they are aware of the fees that will be charged for the service provided and what fee or commission the broker/referrer will receive from the credit provider
- Read and understand any agreement before signing it and be prepared to honour and be bound by the agreement

⁵ <https://www.fca.org.uk/news/press-releases/fca-confirms-temporary-financial-relief-customers-impacted-coronavirus>

Providers should:

- Refrain from using loan brokerage/referral as a means to divert consumers from their current credit providers(s) into unsuitable debt arrangements or into debt arrangements that are more onerous than their current arrangements, including any creation of new security interests or hypothecs
- Ensure that credit options presented to prospective consumers reflect the best option available ~~following a comprehensive review of available options in the marketplace~~
- Disclose ~~all fees to be paid by the consumer for the~~ where fees are paid for the brokerage/referral service ~~and all and/or~~ compensation is payable to the broker/referrer by the credit provider for their brokerage/referral service
- Refrain from using the offer of loan brokerage/referral services to place consumers with related entities without clearly disclosing the relationship

Debt Counselling

Debt counselling is where an organisation helps people understand and plan strategies to settle their debts. It is essential that those providing debt counselling disclose any conflicts or links to those who have loaned to the person they are assisting.

Consumers should:

- When experiencing financial distress, seriously consider seeking free and independent debt counselling services through bodies such as Citizens Advice Jersey who have specialists who can advise on a range of debt related matters.
- Carefully consider businesses offering debt counselling services and take note of the expectations for such providers set out below:
 - Make sure you know what the debt counsellor will, and will not do for you
 - Make sure you know which potential providers of credit, if any, the debt counsellor will contact to inquire about the availability of credit on your behalf
 - Make sure you are aware of the fees that will be charged to you for the service provided and what fee the debt counsellor will receive from any credit provider
 - Make sure you read and understand any agreement before you sign it and that you are prepared to honour and be bound by the agreement you sign

Providers should:

- Refrain from using debt counselling as a means to divert consumers from their current credit provider(s) into unsuitable debt arrangements or into debt arrangements that are more onerous than their current arrangements
- Ensure that credit options presented to consumers reflect the best and most suitable option available following a comprehensive review of the options available in the local marketplace

- Disclose all fees paid by the consumer for the counselling/referral service and all compensation payable to the debt counselling provider by the credit provider for their brokerage/referral service
- Refrain from using the offer of loan brokerage/referral services to place consumers with related entities without clearly disclosing the relationship

Complaints Mechanism and Reporting

Businesses in this sector should have complaints handling mechanisms in place. Most will be within the remit of CIFO, who consumers can refer complaints to when they consider that they have not been satisfactorily handled or settled by the provider.

Consumers should:

- Consumers should check any written statement given to them by a business offering credit or other associated services listed above sets out what is the complaints mechanism and how a consumer can call upon it
- If a business offering credit or other associated services, listed above, fails to follow the complaints mechanism a consumer should contact the agencies listed below

For Providers

- ~~Ensure that when contacting Inform debtors in writing in any written correspondence relating in relation~~ to a debt in prospective or current arrears, ~~of they are made aware of~~ their right to make a complaint regarding the provision of credit and related services to the following (including full contact information as set out below):
 - Jersey Trading Standards Service for complaints about breaches of consumer protection legislation and non-compliance with Codes of Conduct
 - You can contact the Service at:
Jersey Trading Standards Service
PO Box 228
Jersey
JE4 9SS
Email: tradingstandards@gov.je
Website: www.gov.je
Telephone 01534 448160
 - Channel Islands Financial Ombudsman (CIFO) for complaints about an action by the provider causing loss, distress or inconvenience where compensation may be warranted
 - You can contact CIFO at:
Channel Islands Financial Ombudsman (CIFO)
P O Box 114 Jersey
JE4 9QG
Email: enquiries@ci-fo.org
Website: www.ci-fo.org

Jersey local phone: 01534 748610

This may also include directing consumers to the services of

- Citizens Advice Jersey for advice and guidance on debt related matters
 - ~~We are e~~Open Monday to Friday from 10.00am to 3.00pm at St Paul's Centre and Tuesdays from 5.00pm to 7.30pm at Jersey Library.
~~Our s~~Service is still available by e-mail to advice@cab.org.je by telephone on 724942 and freephone 0800 735 0249. If these numbers are busy, ~~we have~~ an extra line is available on 871692. Website: www.cab.org.je

Annex: Expectations Regarding Credit Reporting

Consumers should:

- Be aware of the importance of maintaining a good credit record by meeting repayment obligations as they become due if they are able to do so
- When unable to meet their repayment obligations, take early action to contact their provider to make alternate arrangements in order to avoid or minimise the effect upon their credit file

Experian

You can get free access to your Experian credit report via the Money Saving Expert Credit Club at:

<https://www.moneysavingexpert.com/creditclub/>

Equifax

You can get free access to your Equifax credit report every month by signing up to ClearScore at:

<https://www.clearscore.com/>

TransUnion (formerly Callcredit)

You can get free access to your TransUnion (formerly Callcredit) credit report through a service called Credit Karma (formerly Noddle) at:

<https://www.creditkarma.co.uk/>

Additional Information

Additional information of use to consumers regarding their personal credit file can be found on the UK consumer information site Which at:

https://www.which.co.uk/money/credit-cards-and-loans/credit-scores/credit-reports-all-you-need-to-know-a6kbx3x10l1w#headline_1

Providers should:

- Ensure that credit reporting accurately reflect the status of the debt in accordance with their contractual reporting obligations to credit reporting agencies (CRAs)

- Ensure that consumers making use of any of the debt relief measures offered by their provider will not have their credit file affected inappropriately, giving regard to the approach taken by the UK Financial Conduct Authority⁶
- Refrain from using the threat of a negative credit report to support debt collection activity

⁶ <https://www.fca.org.uk/news/press-releases/fca-confirms-temporary-financial-relief-customers-impacted-coronavirus>