Grant Thornton

Financial Services Restructuring

The UK consumer credit sector

Consumer credit in a cost-of-living crisis:
H1 update and outlook for the remainder of 2023

JULY 2023

Contents

Section	Page
Contents	2
In this report	3
Current market environment	4
Regulatory developments in H1 2023	6
Restructuring activity in the sector – H1 2023	9
Looking forward to the remainder of 2023	10
Spotlight on motor finance	13
Questions to consider	14
How we can help	15
Regular sector insights	16
Recent financial services restructuring credentials	17
Grant Thornton’s delivery for financial services clients	18
Contact us	19

In this report

This report provides an update on the consumer credit market environment for H1 2023, and what we expect for H2. It follows on from our previous publication at the beginning of the year: 'Consumer credit in a cost-of-living crisis.'

We also look at key regulatory developments in the sector during the first half of the year, providing an in-depth analysis of HMT's consultation on the regulation of Buy Now Pay Later.

The report provides an overview of the restructuring activity that we have seen in the consumer credit sector, with a number of firms implementing schemes of arrangement to compromise creditors.

We look ahead to what we expect for the rest of the year, including the outlook for the macro-economic environment, the impact that will have on the consumer credit sector, and highlight forthcoming regulatory developments including the implementation of the Consumer Duty.

The report shines a spotlight on the motor finance sector, outlining the headwinds currently facing firms.

Our financial services restructuring team has worked on some of the highest profile assignments in the consumer credit sector. We highlight questions firms, or their advisors, should consider when looking to bolster resilience, together with our credentials in the sector and how we can help.

Current market environment

Consumers still struggle with cost-of-living and higher interest rates

Inflation is falling, with latest figures showing that headline inflation was 7.3% in June 2023, down from 7.9% in May 2023. However, while this is significantly lower than the high levels seen in October 2022, consumers are still contending with the high cost of food. The annual inflation rate for food and non alcoholic drinks was 17.4% in the year to June 2023.[1]

Accommodation expenses are also rising. More than 4 in 10 adults are finding rent or mortgage payments difficult or very difficult to afford, according to data collected by the Office of National Statistics (ONS).

In the rental market, rental costs rose by 10.4% in the 12 months to April 2023. An average tenant now spends more than 28% of their gross pay on rent.[2]

For home owners, the borrowers of 1.4 million fixed term mortgages which are due to expire in 2023 will face substantial rises in their mortgage payments following successive rises in the Bank of England base rate. According to the ONS, 57% of the UK's fixed rate mortgages coming up for renewal in 2023 were fixed at rates below 2%.[3] The average interest on a new two year fixed rate mortgage is 6.79%.

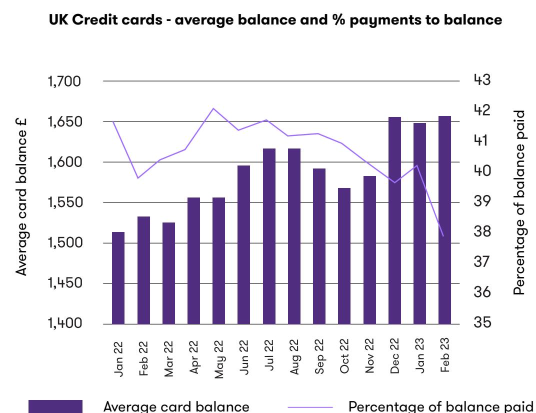
The Office for Budget Responsibility's March 2023 forecast predicts that household debt of all types is expected to rise from £2,333 billion in 2023 to £2,478 billion in 2025. This would make the average total household debt £86,994 (compared with £65,513 in March 2023).[4]

Increased reliance on credit cards and BNPL

As households' every day expenses keep rising, more consumers are obliged to rely on credit cards, buy now pay later (BNPL) options or other unsecured debt just to pay for necessities.

Average credit card spend, and average credit card balances are therefore increasing: 6.7% and 8.2% respectively year on year in March 2023.

Consumers are paying off less of their outstanding balance, indicating the squeeze on budgets. The percentage of payments to balance has dropped consistently since May 2022, and is currently 37.9%. Significantly, accounts with 3 missed payments increased 28% in March 2023 year on year.[5]



BNPL usage has increased – by 10.7% in January 2023, compared to the previous year according to latest research.[6]

The average order value of BNPL purchases has also increased as consumers turn to this payment method as the cost-of-living impacts people's cash flow. Research from April 2023 has shown that the order value using BNPL was around £8 higher from 20 April onwards than it was from 1-19 April.[7]

This indicates that consumers are more reliant on BNPL in the lead up to payday.

A new report has also found that over 3 million people may have borrowed from an illegal money lender over the last three years. As more and more people struggle with the cost of living, illegal money lenders are increasingly targeting people with an median customer income of £20,000-£24,999 - a cohort of people who may not have needed to consider this option until recently.[8]

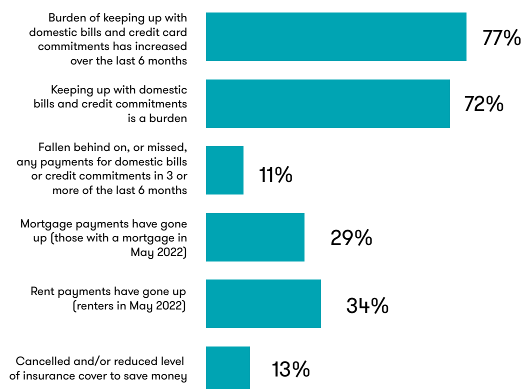
[1] Cost of living insights - Office for National Statistics
[2] Rental Market Report: June 2023 – Zoopla
[3] How increases in housing costs impact households - Office for National Statistics
[4] Statistics Archive - The Money Charity
[5] FICO UK Credit Card Market Report: March/April 2023 - FICO
[6] Adobe Digital Economy Index: UK Consumers Spent £8 Billion Online in January, on par with 2022
[7] Adobe Reveals Increase in BNPL Debt; Rising Costs and Upcoming Spending Trends in the UK - The Fintech Times
[8] Fair4All Finance report, June 2023

FCA Financial Lives survey

In May 2023, the FCA published results from its Financial Lives survey on the consumer experience of the rising cost of living over the six months to January 2023.

The number of people struggling to meet bills and credit repayments rose 40% to 10.9 million in January 2023, from 7.8 million in May 2022.

The number of adults who missed bills or loan payments in at least three of the six months covered by the survey has increased from 4.2 million to 5.6 million (33%).



Given this data was taken from the six-month period ending January 2023, ongoing high inflation and rising interest rates will only have made people's financial situation more difficult, and many more will be pushed into financial difficulty or vulnerable circumstances.

Fall in total pay contributes to rising default rates

While wages are growing at their fastest pace in nearly two years, they are still not rising fast enough to match the rate of increase in households' living costs.

Total pay in real terms (adjusted for inflation) fell by 3% in Q1 2023 compared to a year earlier. There was a similar drop in the previous quarter, and this remains among the largest falls in growth since comparable records began in 2001.[1]

The stress on household finances from both rising costs and falling pay is contributing to consumer credit default rates rising.

In Q1 2023, lenders wrote off £734 million (of which £271 million was credit card debt).[2] According to the Bank of England, default rates for total unsecured lending increased in Q1, remained the same in Q2, and are expected to increase again in Q3 2023.[3]

Data also shows that there were 76,630 homeowner mortgages in arrears of 2.5% or more of the outstanding balance in Q1 2023, 2% more than the previous quarter. 750 homeowner mortgaged properties were taken into possession in the same period, 50% more than the previous quarter.[4]

Given that most people prioritise their mortgage payments over other bills, this data is illustrative of sector wide rising default rates and will have significant implications for providers of consumer credit.

Consumer complaints

As well as dealing with rising default rates, consumer credit firms continue to face complaints from consumers.

Annual complaints data from the Financial Ombudsman Service (FOS) showed that complaints for the financial year ending March 2023 were on a similar level to last year. Credit cards were the second most complained about product, with irresponsible/unaffordable lending being the most complained about issue. There was also an 87% increase in complaints about motor finance which was mainly due to a rise in complaints about commission, fees and charges.

The overall uphold rate by the FOS for consumer credit was 41%.

Each complaint to the FOS generates a case fee of £750 regardless of outcome. Together with the significant resource required for the claims management process, consumer complaints remain a significant issue for the sector.

As well as data from the FOS, data from the FCA showed that the home finance product group saw the biggest increase in complaints received, up 14% to 101,331 complaints in H2 2022.[5]

[1] Office for National Statistics

[2] Statistics Archive - The Money Charity

[3] Credit Conditions Survey - 2023 Q2 - Bank of England

[4] Arrears and possessions - UK Finance

[5] Aggregate complaints data: 2022 H2 - FCA

Regulatory developments in H1 2023

HMT's consultation on BNPL

HMT's consultation on draft legislation for the regulation of Buy Now Pay Later (BNPL) closed in April 2023. Once legislation has been brought before Parliament, the FCA will consult on further tailoring of rules specifically for BNPL which means that final rules for the sector are not expected until late 2024 at the earliest.

It was reported in mid-July that HMT was re-considering the timing of bringing BNPL into the regulatory perimeter, given concerns that stricter rules could prompt some BNPL lenders to leave the market, thereby impacting consumers during a cost of living crisis.

However, even if regulation is delayed, we expect it to be implemented at some point. The following are key points to note from the consultation.

Creditworthiness assessments

BNPL lenders will need to undertake affordability checks. The FCA will consult on what form credit worthiness assessments will take, to ensure proportionality for the BNPL sector. While many BNPL lenders already undertake credit checks, they will need to think carefully how to integrate affordability assessments that will meet regulatory expectations, given that speed and ease of application at checkout has been key for the sector and enabled rapid growth.

Major BNPL lenders have expressed concerns that the proposed regulations may push consumers towards higher risk forms of credit, or increase the risk of 'loan stacking' where consumers can borrow to pay off BNPL debts.

Ads and promotions

Financial promotions for BNPL will have to be approved by an authorised person. Rather than a merchant undertaking this, HMT expect BNPL lenders to provide merchants with pre-approved materials.

It will interesting to see how merchants overcome the challenge of how to display materials at a point of sale interaction where the customer is looking to transact instantaneously.

In the British Retail Consortium's (BRC) response to HMT's consultation, the BRC raised concerns that a 'one size fits all' approach from lenders might result in retailers being forced to use marketing material unsuitable for their customers, but given no choice as the BNPL payment option is popular. To ensure this doesn't happen, and to comply with regulatory expectations, including the Consumer Duty, lenders will need to make sure that all financial promotions are appropriate. This includes those in real-time communications, such as chat bots and instant messaging.

BNPL lenders need to be aware of what a sizeable task this is, in terms of the arrangements, systems and controls that will need to be put in place, including from a governance perspective.

Financial Ombudsman Service

HMT has confirmed that BNPL consumers will be able to complain to the FOS. This is potentially significant as a high number of customer complaints – and related costs of both financial redress and FOS fees, as well as from a resourcing perspective – has been a major factor in the exit of other firms in the consumer credit sector.

Typically, each complaint made to the FOS generates a case fee of £750 payable by the lender, regardless of the outcome. Despite concerns from the industry raised during the consultation process that this fee is disproportionate compared with the average size of a BNPL transaction, HMT has stated it is for the FOS to decide case fees, although it has committed to raise this issue with the FOS.

This interaction may be further complicated by the underlying product, and whether the customer has, or can, return it - or intends to keep it.

Credit reference agencies

BNPL lenders will have to undertake 'clear, consistent and timely' reporting to the credit reference agencies (CRAs), to enable a customers' BNPL loans to be visible on their credit file.

Consumers are increasingly savvy about their credit file, but with this comes increased expectations about the quality of reporting by lenders. Poor reporting or data quality from lenders can affect the ability for customers to obtain credit or cheaper credit, and this can lead to complaints. Historically, consumer complaints about credit reports have been one of the top complaint drivers at the FOS. Recognising that some BNPL firms already report to the CRAs, it is important that BNPL lenders have adequate systems in place to collate and extract accurate data which they can report on a timely basis.

HMT's consultation on BNPL - continued

Customers in financial difficulty

BNPL lenders will be subject to rules within the Consumer Credit Act 1974 (CCA) on treatment of customers in financial difficulty. Many BNPL firms already have processes in place to identify and support customers in financial difficulty but will now need to ensure that these are consistent with potentially more stringent regulatory requirements.

To comply with the CCA, lenders will have to ensure that any action they take towards the customer doesn't constitute an 'unfair relationship', which is detrimental to the customer, and can risk agreements being deemed unenforceable on account of fairness at a later date. 'Unfair relationship' claims continue to have a wide potential application in the context of consumer claims.

Lenders must also ensure that their procedures to identify financial difficulty, and to monitor this on an ongoing basis, meet all regulatory expectations.

Consumer Duty

BNPL lenders will need to comply with the new Consumer Duty rules. This raises the regulatory bar even further for BNPL lenders as they need to ensure 'good outcomes' for their customers. They are also required to make sure that BNPL products are fully understood by customers, meet their needs, provide fair value and help customers achieve their financial objectives.

Scope

Regulation will only apply to agreements offered by third-party lenders. Suppliers of goods and services who grant credit directly will be exempt. Other exemptions are expected to exist for: a) credit agreements to spread the cost of insurance premiums, b) those offered by social landlords to enable tenants to finance the provision of goods and services, and c) employee loans, such as season ticket loans.

How will regulation affect BNPL business models?

The need to comply with the CCA could have a significant impact on customer journeys and point-of-sale processes. While many firms already undertake affordability assessments, making sure these are of a standard that complies with the CCA could bring extra friction at point of use.

Undertaking more rigorous affordability assessments may put customers off taking out a BNPL loan, or reduce spending. Certain cohorts of borrowers might also find it harder to access BNPL products, especially when coupled with the greater visibility of BNPL loans from alternative providers due to the requirement to report to the credit reference agencies.

As competition increases and the sector matures with regulation, firms may need to consider their revenue mix between merchant fees and consumer-driven late fees, as well as cost-cutting exercises in order to improve trading performance and address declining valuations.

HMT's response to this consultation is expected later in 2023, although recent media speculation around a potential delay in the implementation of regulation may impact this timing.

FCA highlight priorities for payments firms

In March 2023, the FCA issued a Dear CEO letter for payments firms. The regulator is concerned payment firms 'do not have sufficiently robust controls' and therefore present 'an unacceptable risk of harm to their customers'. This is exacerbated by tightening economic conditions and the costs of living crisis.

The FCA requires firms to ensure they deliver three outcomes:

- Ensuring customers' money is safe
- Ensuring the firm does not compromise financial system integrity
- Meeting customers' needs, including through implementation of the Consumer Duty, including documenting the action taken.

The FCA focuses on financial resilience and prudential risk management as a priority. Payment firms are required to consider holding above the minimum capital requirement where that would be prudent based on the firms' assessment of the risks it faces. They must undertake detailed scenario planning and stress testing to assess risks.

Wind down plans - Despite guidance issued in July 2020 making it clear that having a wind down plan was a condition of authorisation, the FCA said that many payment firms have not yet got one in place. This needs priority action by firms and will likely continue to be a focus for the FCA.

Other regulatory developments in the sector

- **February 2023** - FCA Regulatory Initiatives grid published showing regulatory priorities for the year
- **February 2023** – Consultation on liquidity and disclosure aspects of the 'Simpler Regime' for non-systemic banks and building societies (CP4/23)
- **March 2023** - Guidance for firms supporting their existing mortgage borrowers impacted by the rising costs of living published (FG23/2)
- **May 2023** – Consultation on strengthening protections for borrowers in financial difficulty: consumer credit and mortgages (CP23/13)
- **June 2023** – Consultation on solvent exit planning for non-systemic banks and building societies (CP10/23)
- **June 2023** – Final Rules banning referral fees for debt packagers to help struggling consumers (PS23/5)

Restructuring activity in the sector: H1 2023

There has been much restructuring activity in the consumer credit sector so far this year. Most notably, Amigo, Morses and Non-Standard Finance (trading as Everyday Loans) have pursued or progressed schemes of arrangement in order to compromise historical redress liabilities.

The outcomes of these schemes are precedent setting for the sector and the judgements in each case are instructive for how consumer credit firms and their lenders should approach the use of schemes in the future, and the challenges the FCA is likely to raise.

The three key questions being asked in each are:

1. Is there sufficient market appetite to allow for a continued trading of the business beyond the scheme, ie through a public equity raise?
2. Will the FCA object to the scheme at the convening and/or sanctioning stage?
3. Is the relevant alternative (insolvency) a worse outcome for customers than the proposed scheme?

Amigo Loans Ltd

In March 2023, guarantor loans provider Amigo Loans announced it was switching to the 'fallback solution' scheme, an option included in the company's proposed scheme of arrangement in case a planned equity raise was unsuccessful.

The company had an initial unsuccessful attempt for a scheme of arrangement in 2021, and then had its 'new business scheme' sanctioned by the court in May 2022. However, after the Board decided that their planned equity raise (part of the new business scheme) was unlikely to be successful, the decision was taken to undertake an orderly wind down of operations – the 'fallback solution.'

By switching to the fallback solution, Amigo has stopped lending, and the existing loan book will continue to be collected for approximately 12 months.

During the orderly wind down, the scheme claims process continues.

Morses Club Plc

In May 2023, the Court sanctioned doorstep loans provider Morses Club's scheme of arrangement. Morses had proposed the scheme of arrangement to compromise redress claim liabilities against its historical lending practices. The scheme sets up a £20 million compensation fund to pay creditors, of which £5 million will come from the company, with the remaining £15 million to be provided by shareholder funding if successful. This will have the effect of diluting existing equity holders by 95%.

The FCA had initially opposed the scheme. This was due to concerns that consumers may have been left worse off in the event that the scheme was approved, but a subsequent equity raise failed and this resulted in an insolvency, particularly given the reliance on new equity being injected into the business, which the FCA commented was uncertain. To address this, Morses agreed to put £1.2 million into a trust account, which would be used to pay claims in the event that the equity raise fails. The FCA consequently dropped its opposition.

Non-Standard Finance Plc

In June 2023, the court sanctioned the scheme of arrangement for the lender Non-Standard Finance (NSF) to compromise redress claim liabilities against its historical lending. A fund of £14 million is to be created for payment to customers with valid redress claims and the Financial Ombudsman Service.

The group had proposed a recapitalisation via an equity raise (Plan A), but have now transitioned to a fallback Plan B which involves lenders taking control in exchange for the release of £70 million of secured debt, a £40 million new lending facility from the secured lenders and an extension of the term loan maturity date by four years, with temporary reduction in interest payable.

The terms of the scheme are expected to secure the future trading of Everyday Lending Limited, a wholly owned subsidiary of NSF prior to the implementation of Plan B.

Looking forward to the remainder of 2023

Inflation

Forecasters agree that inflation will continue to fall over the remainder of 2023. This is because wholesale energy prices have fallen, and a fall in the price of imported goods is expected as some of the production difficulties businesses have faced are starting to ease.

As household finances have been squeezed, this creates less demand for goods and services in the UK, contributing to a downwards pressure on prices.

The Chancellor of the Exchequer, Jeremy Hunt, is aiming to halve the inflation figure by year end. For example, in order to tackle food inflation, the Bank of England is working together with the Competition and Markets Authority (CMA) to investigate profits in the food industry supply chain. The CMA has powers to tackle any evidence of profiteering.

Interest rates

Following the Bank of England (BoE) raising interest rates by 0.5% on 22 June 2023, the latest base rate is 5%.

The BoE have stated that further tightening of monetary policy may be required, with many in the market predicting that interest rates will rise to 6% by the end of 2023 and stay at that level until well into 2024.

Any further rises in interest rates will be reflected in mortgage rates, bringing added pressure to households with fixed rate mortgages due to expire over the next year.

Wage growth and unemployment rate

Latest figures issued in June showed that wages grew faster than predicted in the three months to April 2023, even though this data was the first to include the impact of the 9.7% rise in the minimum wage. However, consumers are expected to continue to have less purchasing power throughout 2023 due to the cost-of-living.

According to Statista, the annual unemployment rate for 2023 is expected to be 4.1%, compared to 3.7% in 2022.[1] Unemployment is expected to rise to 4.4% by 2024, before falling gradually to around 4% by 2027.

New Energy Price cap effective from July 2023

A reduced energy price cap came into effect from 1 July, meaning consumers are paying less for their energy bills. From 1 July - 30 September prices are capped at £2,074, a reduction of £426 from the previous April price cap. The price cap is now reviewed quarterly by Ofgem.

While this is good news for consumers, it is still above levels that consumers were paying before the energy crisis started more than 18 months ago, so many households will still struggle to pay their bills.

[1] UK unemployment rate forecast 2023 - Statista

Deadline for Consumer Duty implementation

The deadline for implementation of the Consumer Duty for existing products and services is 31 July 2023.

From this date, firms need to comply with the four outcomes rules relating to:

- products and services
- price and value
- consumer understanding
- consumer support

The FCA recently warned firms who ignore the Duty that they can expect swift action: 'Our supervisory and enforcement approach will be proportionate to the harm – or risk of harm – to consumers, with a sharp focus on outcomes'.

In May, the FCA shared findings from its review of firms' fair value assessment frameworks under the Consumer Duty[1], which highlights good practice and areas for further consideration. While the regulator found that many firms had carefully considered the FCA's price and value requirements, there was more work to do, with 4 key areas that firms should focus on. These include collecting evidence that demonstrates products represent fair value and having clear oversight of actions to take if products do not provide fair value.

Consultation on the reform of the Consumer Credit Act

On 10 July, the government published its response to its consultation: Reform of the Consumer Credit Act (CCA) and announced that it intends to move forward with its ambitious overhaul of the CCA. The purpose of reform is to facilitate innovation in the credit sector, increase accessibility of credit products and contribute to growth in the sector and economy more broadly.

Much of the CCA, implemented in 1974, is considered cumbersome and inflexible. The proposition is to move the majority of the CCA from statute to sit under the FCA, allowing the regulator to quickly respond to developments in the consumer credit market rather than having to amend existing legislation.

Five principles have been developed to underpin this reform:

- **Proportionate** – balancing the need for consumer protections with business burden
- **Aligned** – any reform must align with the FCA's existing regulatory strategy and rules
- **Forward-looking** – any change must be adaptable to future ways of delivering products in the future
- **Deliverable** – reforms must be deliverable by the FCA and the industry
- **Simplified** – language used must be modernised and simplified to make it accessible to consumers, and easier for firms to comply with

More detailed proposals are in development, with a second stage consultation expected in 2024.

[1] FCA - Consumer Duty: Findings from our review of fair value frameworks, published 10 May 2023

Treatment of borrowers in financial difficulty

The FCA is proposing to make the temporary measures for lenders to support borrowers in difficulty - which were put in place during the pandemic - permanent. The consultation on this proposal 'Strengthening Protections for Borrowers in Financial Difficulty: Consumer Credit and Mortgages' (CP23/13) was published in May 2023 closed 13 July 2023.

Rules and guidance within this consultation mean consumer credit providers (including mortgage and overdraft providers) have to:

- Provide support to customers struggling with repayments, which may include reducing or waiving payments, or changing the loan term
- Ensure that repayment arrangements are appropriate
- Guide customers towards free, impartial money guidance and debt advice
- Not charge arrears fees that are higher than necessary
- Consider the overall impact of support arrangements on mortgage balances

The FCA looked at almost 100 lenders, examining how they treat borrowers in financial difficulty and concluded that significant improvements are required from many lenders.

Issues identified by the FCA include not adequately tailoring support to individual circumstances, failing to respond appropriately to customers with characteristics of vulnerability, and not effectively engaging with customers about money guidance and debt advice.

As a consequence of these findings, in May 2023 the FCA announced it had secured up to £47 million of redress for customers from 17 lenders.

Preparing for the introduction of the financial resilience regulatory return

The FCA is implementing a new financial resilience regulatory return, the Baseline Financial Resilience Regulatory Report, known as FIN073. This is to rationalise and standardise data that was previously collected by the Financial Resilience Survey and will consist of five questions instead of the previous nine. The data will be gathered quarterly, and used by the FCA to understand the risk of firm failure and other risks across the financial services sector.

In May 2023, the FCA consulted (CP23/9) on including all full permission consumer credit firms within the scope of FIN073. Should this become policy, full permission consumer credit firms will need to be prepared to submit quarterly returns, starting in January 2024.

Expectations for the consumer credit sector in H2

We expect demand for consumer credit for the rest of 2023 to remain strong. Due to the stress on households, we also believe that default rates will continue to increase, as will the number of customers facing financial difficulties or reporting vulnerabilities.

Regulatory pressure on consumer credit firms to provide forbearance and support to consumers is expected to remain.

Firms have an opportunity to take advantage of an increase in demand for credit, while at the same time supporting their customers. Appropriate lending criteria is even more important than ever. Having procedures in place to identify financial difficulties early and tailoring strategies for working with these customers is vital.

Regular forecasting on a granular basis can help identify risk areas or warning signs in the business, enabling early intervention to shore up financial resilience.

Spotlight on motor finance

We believe motor finance is a subsector to watch in H2 2023.

Motor finance debt per consumer has significantly increased over the past decade or more. The table below illustrates that in the 13-year period from 2009 to 2022, total motor finance debt increased 263%. To put this into context, average weekly earnings in the same period increased 41%.[1]

	2009	2022
New car finance	£5.8 billion	£17.3 billion
Used car finance	£5.4 billion	£23.4 billion
Total car finance	£11.2 billion	£40.7 billion

However, figures released by the Finance & Leasing Association (FLA) show that consumer car finance new business fell by 9% by value and 8% by volume in the five months to May 2023 compared with the same period in 2022. FLA research also suggests the value of consumer car finance new business is likely to contract by 3% in 2023, reflecting the uncertainty of the economic outlook.[2]

Higher default rates expected

For many consumers, servicing high levels of motor finance debt is expected to become increasingly unsustainable as high inflation and rising interest rates are severely squeezing household budgets. This is likely to have an impact on the sector, and we expect motor finance firms to experience higher default rates during H2 2023 and beyond.

Increasing number of complaints about motor finance

The number of consumer complaints about motor finance has also increased materially – up 85% year on year. The FOS received 11,446 complaints about motor finance in the 2022/23 financial year. Motor finance has now been in the top five most complained about products for two consecutive years.

Whereas in the past complaints have focussed on the quality of the car bought, in the reporting year 2022-23, 49% of complaints were about commissions, fees and charges, up from 24% in 2021-22. This has led to the FCA to look into whether firms in the motor finance industry are complying with regulatory requirements about disclosure of fees and commissions introduced in 2021.

Complaints management companies focussing on the sector

Approximately 90% of complaints to the FOS about motor finance came from third parties, showing that this is an area of focus by claims management companies (CMCs). As complaints are eligible within six years of either the point of purchase or the end of the loan agreement, CMCs have both the potential and the ability to generate a large number of claims in a short period of time which can put pressure on firms' complaint handling resources.

Deficiencies in statutory notices

Many firms inadvertently experience issues from time to time when it comes to issuing statutory notices to their customers. The consequences of non-compliance can be severe, including the debt becoming unenforceable.

Motor finance firms must ensure that they issue all the statutory notices required, in the prescribed form and at the correct intervals throughout the life of the arrangement with the customer. This may seem simple, but it is an issue that many firms regulated by the CCA fall foul of.

Sections 77A and 86B of the CCA strictly regulate the serving of annual statements and notices of sums in arrears (NOSIA for the first, or SNOSIA for subsequent). A NOSIA must be issued when there have been two missed payments, and within the permitted timeframe of 14 days. Critically, a NOSIA must still be issued even if the borrower has subsequently made a payment to clear the arrears before the NOSIA has been sent. The consequence of non-compliance of the statutory notice rules are:

1. the debt becomes unenforceable,
2. interest ceases to run, and
3. default sums cease to be payable.[3]

If the timeframe is met, but there is an error in the content, unenforceability remains. Many errors in the issuing of statutory notices only come to light when a firm identifies a pattern in complaints or customer contact, issues with backend systems, or when attempting to undertake a debt sale to a third party. This can particularly be the case following extended periods of forbearance (such as those offered during the pandemic or during the current cost of living pressures) where automated systems are not set up to deal with this.

Motor finance firms should undertake regular audit exercises to check that all notices are being issued correctly. Should a motor finance firm discover a breach, they must self-report to the FCA, outline what steps they propose to rectify the issue and undertake a remediation exercise.

[1] Borrowing on cars balloons to record level - This is Money

[2] Finance and Leasing Association - Latest motor finance statistics

[3] Henderson Chambers - Unenforceability provisions in consumer credit regulations - Richard Mawrey QC

Questions to consider

We consider some of the more important areas for consumer credit firms to focus on – some will be more relevant to your business than others.

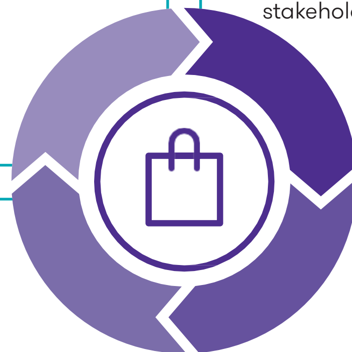
Assess	Protect	Restore

Regulatory compliance

- Are affordability and vulnerability assessments fit for purpose in the current fast moving macro-economic environment?
- Does the firm's lending criteria need to be revisited?
- Are all statutory notices issued as required to ensure there are no issues when seeking to recover non-performing loans?
- Has the firm met and documented all operational resilience requirements?
- Is the firm on track for embedding the new Consumer Duty requirements?
- Does the firm have a robust wind down plan, and does this need to be revisited in light of changes in the macro-economic environment?

Liquidity and refinancing

- How will increased levels of consumer delinquency impact liquidity?
- Are appropriate forecasting models in place to stress test resilience in different scenarios and identify triggers that might lead to underperformance or stress across the business?
- What sources of short-term finance/funding are available, and will these be on significantly tighter terms and higher pricing than before?
- Is the firm able to remain within its financial covenants, and what are the options to restructure debt obligations?
- Can management demonstrate the viability of the business, and how can this be best positioned with stakeholders?



Operational improvement

- Is the firm leveraging customer data to best effect?
- Should the firm invest in talent acquisition or form new partnerships to utilise data analytics?
- Where automated decision making is used for credit decisions, does the data behind the algorithms used need to be updated or reviewed?
- Will AI provide opportunities to tailor/personalise customer interactions?

Taking advantage of opportunities

- With some high-profile exits in the sector – how can the firm take advantage of this?
- Given the growing precedent of using restructuring tools to crystallise liabilities, is this something the firm should consider?
- How can the firm tap into increased demand for consumer credit, while still meeting FCA expectations?

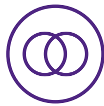
How we can help

Wind-down planning

Supporting firms to cease regulated activities with minimal adverse impact on its clients and counterparties. This includes scenarios where a firm may wish to undertake a strategic exit, as well as an unexpected crisis or insolvency. Supporting management in producing a wind down plan, or reviewing and providing recommendations to existing wind down plans.

Restructuring procedures

Negotiating restructuring procedures such as schemes of arrangement and restructuring plans, handing the process from beginning to end and managing competing priorities of stakeholders.



Contingency planning

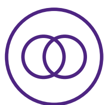
Advising on the options available to stakeholders in the event of a crisis or financial distress, including assessment of outcomes in various scenarios.

Debt advisory and refinancing

Sourcing new or alternative funding (including ABLs), negotiating with existing funders, restructuring of debt and equity to provide financial stability.

Back Up Service Facilitator

Co-ordinating the implementation of a wind-down on the occurrence of certain trigger events.



Solvent eliminations

Used to extract assets and cash from a solvent company in a tax-efficient way.

Cash flow forecasts

Review of short-term or medium-term cash flow forecasts to assess funding requirements, as well as ongoing cash flow monitoring.

Independent business and pre-lending reviews

An independent assessment of the financial health and viability of a business, with a view to protecting lenders' exposure.

Turnaround services

Providing support to create financial stability, advising on NPL portfolios, assessing cash flow, and identifying other means of improving short term liquidity or addressing drivers of underperformance.

AMA processes

An accelerated sales process, used to realise value for key stakeholders.

Corporate insolvency appointments

Statutory insolvency appointments, including administrations, liquidation, receivership, CVLs.

Regular sector insights

We produce regular sector insights and publications for our readership. These can be accessed at www.grantthornton.co.uk/services/restructuring/financial-services-restructuring-and-insolvency where you can subscribe to any future content.

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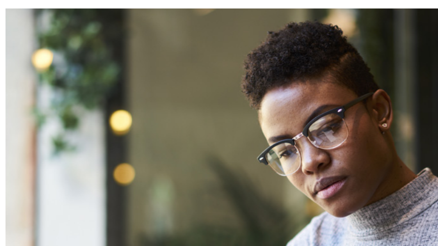

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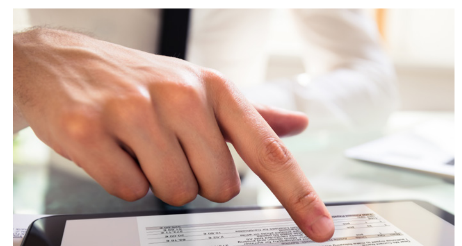

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FCA requires lenders to improve consumer outcomes

14 Dec 2023

Recent Financial Services Restructuring credentials

Non-Standard Finance
Trading as Everyday Loans

Consumer credit

Restructuring advisory

Scheme of arrangement to address historic redress liabilities

Project Eagle

BNPL provider

Contingency planning

£6.5 million loan book

SD Taylor
Trading as Loans at Home

Consumer credit

Contingency planning
Administration appointment

Outstanding loan book £60 million on appointment

Caversham Finance
Trading as BrightHouse

Consumer credit

Contingency planning
Administration appointment

Outstanding loan book c£230 million on appointment

CashEuroNet LLC
Trading as QuickQuid

Consumer credit

Contingency planning
Administration appointment

Outstanding loan book c.£300 million on appointment

Wonga

Consumer credit

Contingency planning
Administration appointment

Outstanding loan book c.£77 million

Project Juniper

Consumer credit

Insolvency outcome analysis

Contingency planning and estimated outcome insolvency analysis

MMP Financial Ltd

Consumer credit

Solvent winddown support

Repayment demand relating to inter-company loan impacted ability to trade solvently

Greensill Capital

Supply chain finance

Contingency planning
Administration appointment

Recovery of c.$17 billion of receivables on behalf of GCUK and its investors

Project Falcon

Wealth management

Solvent winddown support

Restructuring advisory services

Lendy Ltd

Peer2peer Property Finance Platform

Conflict administrators

Acting as conflict administrators in respect of issues arising on this high-profile P2P lender

Project Skate

Transport rental business

Back up Servicing

BUS agreement, as part of company's growth plan

Grant Thornton's delivery for Financial Services clients

85%

We advise 85% of the top 20 global banks and work with six of the ten largest global insurance firms

300+ experts

Grant Thornton UK's Financial Services Group consists of over 30 partners and 300 restructuring employees

£3bn

Of asset recovery globally over the previous nine years

£570m

Globally, our financial services offering is a practice of more than £570m

£1bn

We have assisted financial services clients to recover over £1 billion of 'lost causes', turning write-offs into recovery

9/10

We are one of the largest providers of Skilled Person Reviews to the FCA, sitting on nine of the 10 FCA Skilled Person Panels

Contact us

Get in touch with our our financial services professionals or visit www.grantthornton.co.uk/services/restructuring to find out more.

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