FS20/17 Mortgages and coronavirus: Updated Payment Deferral and Tailored Support Guidance for Firms – Feedback on draft guidance

November 2020

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1 Introduction

Background

1.1 The coronavirus (Covid-19) pandemic has had a significant impact on millions of consumers, businesses and on the mortgage market. Since March 2020, we have intervened to support both consumers and businesses during this period of uncertainty.

1.2 In March, we published temporary guidance setting out how we expect firms to support borrowers who were facing temporary payment difficulties because of the exceptional circumstances arising out of coronavirus. That guidance set out our expectation that firms offer these borrowers payment deferrals of up to 3 months and refrain from taking steps to repossess homes.

1.3 This guidance provided immediate and temporary support for borrowers to help them deal with the short-term financial difficulties they faced because of coronavirus. We updated this guidance in June as the coronavirus pandemic and the Government's response to it evolved. This allowed borrowers still struggling with the effects of coronavirus to take a second payment deferral of up to 3 months (up to 6 months in total).

1.4 In September, we published additional guidance setting out the tailored support that firms should provide to borrowers who had benefitted from payment deferrals and remained in financial difficulty, as well as those who were newly affected by coronavirus once the June guidance expired on 31 October 2020. We said we would keep our approach under review and update our guidance if needed.

1.5 On 31 October, the Government announced new restrictions to deal with a second wave of coronavirus and we indicated our intention to extend the availability of payment deferrals. We proposed that borrowers impacted by coronavirus who had not yet had a mortgage payment deferral would be entitled to a 6 month deferral, and those that had a current first mortgage payment deferral expiring after 31 October, as well as those who previously had a payment deferral, would be able to take a second one, without this being recorded on their credit file. We confirmed we would work with firms and trade bodies to implement this as quickly as possible and published draft guidance for comment on 2 November.

1.6 We wanted to act quickly to protect consumers in these difficult times and provide clarity for firms and did not formally consult on the proposals or produce a cost benefit analysis. To do this would have caused a delay that would be prejudicial to the interests of consumers. However, we invited comments on our proposals and received 28 responses from consumer organisations, firms, trade bodies and individuals. Most respondents supported our proposals. This feedback statement summarises the feedback we received on our proposals and our response.

1.7 The guidance advances our consumer protection objective and is designed to protect consumers by providing them with ongoing support in the light of the current exceptional circumstances. In developing the policy and considering responses, we have had regard to our consumer protection objective, and our market integrity and competition objectives, in particular in considering the different impacts on firms of the proposals.

1.8 We do not consider our guidance will adversely affect consumers with protected characteristics under the Equality Act 2010.

Summary of changes to further guidance and additional guidance

1.9 We are now publishing our final guidance, subject to several changes. These include amendments to clarify:

- the relationship between the 'Payment Deferral Guidance' (Mortgages and Coronavirus: Payment Deferral Guidance) and the 'Tailored Support Guidance' (Mortgages and Coronavirus: Tailored Support Guidance) and when firms should follow each
- when firms should offer payment deferrals, including for customers who have already taken a payment deferral under the guidance (including its previous versions) and those who are experiencing payment difficulties and need support for the first time as a result of coronavirus
- how payment deferrals taken under the Payment Deferral Guidance interact with our guidance published in PS 20/11 (Removing barriers to intra-group switching and helping borrowers with maturing interest-only and part-and-part mortgages)

Next steps

1.10 The updated Payment Deferral Guidance and updated Tailored Support Guidance come into effect on 20 November 2020.

1.11 But we encourage firms to consider how they can best support their customers at this time, and to follow this guidance earlier than 20 November where they are able to. This may help to limit the number of cases of customers dealt with since 31 October whose outcomes will need to be reviewed in line with para 1.22 of the Payment Deferral Guidance. For the period 17 November 2020 to 20 November 2020, a firm is free to act in line with this guidance without that placing it in contravention of Principle 6, Principle 7, MCOB 2.5A.1R or MCOB 13.

1.12 The guidance applies in the exceptional circumstances arising out of the coronavirus pandemic (Covid-19) and its impact on the financial situation of mortgage customers. It is not intended to have any relevance in circumstances other than those related to coronavirus.

- The Payment Deferral guidance remains in force until 31 July 2021 except that firms should continue to act in accordance with Section 4 (Dealing with customers at the end of a payment deferral period) for all customers who have had a payment deferral but who have not been dealt with under that section by that date. The guidance remains in force after 31 July 2021 to the extent necessary to enable this.
- The Tailored Support Guidance remains in force until varied or revoked.

2 Key issues and our response

General

2.1 Most respondents supported proposals to extend the availability of payment deferrals for a further period. Respondents also agreed with proposals that firms should not repossess a customer's property before 31 January 2021.

2.2 Firms and consumer groups emphasised the need for clarity on when customers would need to apply and whether there was flexibility to offer more than two deferrals of different lengths to enable customers who had already had one or two payment deferrals to 'top up' to the maximum allowed.

2.3 Most respondents also agreed that firms should provide tailored support to customers after they have taken the maximum number of payment deferrals available to them under the Payment Deferral Guidance.

Repossessions

2.4 Our draft guidance proposed that a firm should not enforce repossession and should not seek, or enforce, a warrant for possession before 31 January 2021, unless there are exceptional circumstances such as a customer requesting that proceedings continue.

Issues raised

2.5 Industry respondents were largely supportive of the proposal. Some firms asked for more clarity on what repossession action they could take before 31 January 2021 and some asked for further examples of when they could proceed on the basis of exceptional circumstances.

2.6 Consumer groups also supported the approach and welcomed the certainty this would provide for borrowers during this difficult period. Some consumer groups suggested the proposal preventing repossession should be extended further, for example into February 2021, or in line with any further national or local restrictions.

Our response

2.7 We do not propose to make substantive changes to the draft guidance on repossessions, so firms should not enforce repossession before 31 January 2021. Given ongoing uncertainties arising from the impact of coronavirus, we will keep this under review and will update or amend our guidance, or provide new guidance, if it is required.

2.8 The guidance confirms that firms can enforce repossession before 31 January 2021 in exceptional circumstances such as a customer requesting that repossession proceedings continue. We expect firms to read this exception narrowly and do not propose to provide any further examples. Before proceeding, a firm should consider the appropriateness of doing so given the borrower's individual circumstances.

2.9 We confirm that while lenders can take steps towards repossession before 31 January 2021, for example by commencing court proceedings, seeking a hearing or obtaining an order for possession, they should not take steps to enforce it before 31 January 2021.

Payment deferrals

2.10 We proposed that we reintroduce our previous guidance on payment deferrals that provided for any individual borrower to take up to two payment deferrals of up to 3 months each (allowing for a maximum of 6 months in total). Payment deferrals agreed under that guidance are not reported to credit files as missed payments and can be capitalised. If a borrower is still in financial difficulties after the payment deferrals available to them under the Payment Deferral Guidance, firms should provide further support in the form of tailored forbearance in accordance with the Tailored Support Guidance. Further support will be reported to credit reference agencies in the normal way and firms should explain the implications of this.

Limiting the maximum length of payment deferrals to 6 months

Issues raised

2.11 Respondents broadly supported an extension of the availability of payment deferrals of up to 6 months for individual customers. One industry stakeholder asked that we recognise the considerable cost to firms of continuing to provide this exceptional support noting that some lenders and in particular non-bank lenders do not have access to the low-cost funding available to others. One consumer representative wanted customers to be able to defer payments for an additional 3 months (for 9 months in total), and another suggested that the limit should be tailored to accommodate individual customer circumstances. Some consumers and consumer representatives raised concerns about lenders' ability to operationalise and provide consistent and appropriate tailored forbearance, and thought longer payment deferrals could be offered to protect consumers from related harms.

Our response

2.12 Payment deferrals were intended to provide support to borrowers with temporary financial difficulties. The deferral attracts interest, which means that the borrower's debt increases.

2.13 While some sectors have been particularly hard-hit by the crisis, such as hospitality or travel, the ability of individuals to recover from the impact of the crisis and resume mortgage repayments will vary depending on their circumstances. Customers with longer-term payment difficulties (and who cannot resume payments after taking the maximum number of payment deferrals available to them under the Payment Deferral Guidance) will have a range of different needs and circumstances. Moving to tailored forbearance after a maximum of 6 months ensures customers get support that accounts for their particular circumstances (including, for example the size of the loan and the term remaining to retirement). Firms should consider offering payment deferrals under tailored forbearance where they consider it to be sustainable and appropriate, but these should be reported to credit files in accordance with usual processes. We explain further our rationale for this in paragraph 2.38.

2.14 We recognise the financial constraints of some lenders and the challenges in extending payment deferrals. We also recognise the operational challenge of providing tailored support but do not consider that extending the period for which deferrals can be taken is the right response to this concern. Although the potential demand for forbearance is still high relative to historic levels, our proposals will help to smooth the potential demand for tailored forbearance over the next eight months. This should alleviate some of the operational challenges for firms.

2.15 Our final guidance confirms that payment deferrals under our guidance are subject to an overall maximum of 6 months.

Flexibility of payment deferrals

2.16 Our previous guidance assumed that payment deferrals would be continuous, except where a borrower missed a single payment after a first deferral, with no individual deferral being longer than 3 months. Our draft guidance proposed to allow for non-continuous payment deferrals so that customers who had previously taken one payment deferral and resumed payments could get a second deferral of up to 3 months.

2.17 Our proposed guidance also recognised that some customers may have received tailored forbearance, or be receiving tailored forbearance, after taking a payment deferral. Recognising that this would have taken account of the customer’s individual circumstances, and with no expectation that firms revisit these arrangements, the draft guidance proposed that these customers would not be eligible for a further deferral even where they had benefitted from payment deferrals of less than 6 months in total.

Issues raised

2.18 Several lenders told us that they had interpreted our previous guidance as allowing multiple payment deferrals providing this did not exceed the overall maximum of 6 months in total. They favoured retaining this flexibility to provide ‘top ups’ to consumers who had already had two payment deferrals of less than 6 months in total. One lender, although not arguing against allowing greater flexibility, said that operational constraints would mean it would be more difficult for them to provide such flexibility and suggested that any change to the guidance that permitted firms to offer this should not require them to do so.

2.19 Without exception those lenders and their representatives who commented considered that, if non-continuous payment deferrals were allowed, borrowers in arrears or receiving tailored support since their first or second deferral should still be able to access a further deferral where they had not yet had the benefit of the full 6 months. Consumer representatives shared the concerns that all consumers should be able to access the maximum 6 months allowable irrespective of their circumstances.

2.20 Lenders and their representatives also raised a few practical and technical questions regarding eligibility for the maximum number of payment deferrals where a borrower had already benefited from one or more payment deferrals. For example, whether a borrower would be eligible where they had already taken a previous deferral on a precautionary basis, and either continued making their normal payments, or immediately repaid the amount deferred with interest.

2.21 One industry representative also asked whether payment deferrals should be measured in months or the amount deferred, and whether, for example, a customer who had taken the 6-month maximum as partial deferrals, paying 50% of their normal monthly commitment, could get a further 6-month partial payment deferral of 50%. A consumer representative similarly raised a concern that not offering customers who had taken partial deferrals the opportunity to take these for a longer period to make them equivalent to a full payment deferral penalised those who had tried to do the right thing by paying what they could.

Our response

2.22 Although our aim was to allow consumers to secure payment deferrals of up to 6 months in total, we acknowledge that the effect of the draft guidance meant that some consumers would be unable to get 6 months in total; for example, customers who had a first payment deferral of less than 3 months or who had taken 2 payment deferrals totalling less than 6 months could not reach a total of 6 months.

2.23 The final guidance allows payment deferrals that are not consecutive.

2.24 We agree that customers should be able to obtain the benefit of 6 months from more than 2 payment deferrals and so be able to access further support if they need it now. We also agree that consumers in arrears or receiving tailored support should be able to access payment deferrals of up to 6 months. The guidance therefore no longer applies differently where borrowers have moved to another form of support after a payment deferral, or who have missed two or more payments after a previous deferral. In summary the finalised guidance ensures that all borrowers should be able to access payment deferrals up to a maximum of 6 months.

2.25 The guidance confirms that each deferral should be granted for no more than 3 months at one time to ensure customers have an opportunity to reflect on the impact and cost of each deferral before taking another. This does not prevent customers from obtaining consecutive deferrals that last for more than 3 months in total.

2.26 These overall limits do not prevent a firm from disregarding any payment deferral that was applied for previously but not in fact used, although we recognise that these circumstances are likely to be infrequent. We do not consider it necessary to update the guidance to reflect this.

2.27 As has been the case since payment deferrals were introduced under the March guidance, payment deferrals are measured in months where an amount other than the full contractual payment is made, so full and partial deferrals count in the same way to the overall maximum allowance of 6 months.

Proposed deadline for applying for payment deferrals

2.28 We proposed that borrowers who were newly impacted had until 31 January 2021 to apply for an initial payment deferral of up to 3 months, with the ability to extend this to the maximum 6 months. We also proposed that customers requesting a further payment deferral would also need to apply by 31 January 2021. This date, in combination with the proposed maximum of 6 months meant that payment deferrals would end by 31 July 2021.

Issues raised

2.29 Many respondents requested further clarity as to who would be eligible for what given the proposed deadline for applications of 31 January 2021 and the availability of extension after this date. They suggested the scope and application to different customer groups was clearer in our press statement of 2 November and suggested we incorporate this into the guidance.

2.30 In particular, there were several requests for greater clarity on whether further payment deferrals could be granted after 31 January to borrowers who had already had a first deferral and, if so, if this was limited to where the further deferral came immediately after the end of a previous one. There were also some comments about whether the guidance required payment deferrals to be consecutive.

2.31 Some consumer representatives did not understand that the draft guidance provided that those applying for a 3 month payment deferral before 31 January 2021 could take a further 3 month payment deferral after this and echoed the request for clarity. They were concerned that the 31 January deadline did not appear to allow those newly affected to obtain the maximum 6 months and that this might not be sufficiently flexible to support all borrowers affected by circumstances relating to coronavirus.

Our response

2.32 Since we published our draft guidance on 2 November the Government has also announced an extension of the furlough scheme until 31 March 2021. In light of this, the responses, and our decision to increase the flexibility of payment deferrals, we consider it appropriate to extend the deadline by which consumers need to apply for a first or further payment deferral to 31 March 2021. This means that customers who have already benefitted from a deferral of less than 6 months can ask for a further payment deferral until 31 March.

2.33 We have confirmed a deadline of 31 July 2021 for all deferrals to end. The practical effect of these dates is as follows:

- Customers who are newly impacted by coronavirus, and who want to benefit from the maximum 6 months available, should apply in good time before their February 2021 payment is due.
- Customers can apply for an initial payment deferral until 31 March but, depending on when they apply, may not be able to obtain the maximum 6-months as they are only able to defer payments due up to, and including, 31 July 2021.
- Customers who have already benefitted from deferrals of less than 6 months in total under the guidance, also have until 31 March 2021 to apply for a further deferral.
- Customers will be able to extend an ongoing deferral after 31 March 2021 to cover payments up to and including July 2021, provided these deferrals cover consecutive payments, subject to the maximum allowed. For example, subject to an overall maximum of 6 months:

- a customer who had agreed to defer three payments falling due on the first day of February, March and April can extend this after 31 March for up to a further 3-months, deferring their payments falling due on the first day of May, June and July;
- a customer who had agreed, on or before 31 March, to defer two payments falling due on 31 March and 30 April can renew this after 31 March for a further 1, 2 or 3 months, deferring their payments falling due on 31 May, 30 June or 31 July.

2.34 Although non-continuous payment deferrals are permitted up to 31 March they are not permitted after the 31 March 2021 deadline.

Credit Reference Agency (CRA) reporting

2.35 The guidance proposed that the same effects would attach to payment deferrals as those agreed under previous versions of the Payment Deferral Guidance. Firms should not report payment deferrals agreed under this guidance as missed payments, and can capitalise deferrals unless the customer opts out.

2.36 Firms should resume normal CRA reporting at the end of payment deferrals provided under the Payment Deferral Guidance. The effect of the proposed guidance was to extend the period during which missed payments would not be reported to some customer's credit files, from 31 January 2021 (under our previous guidance) until 31 July 2021.

Issues raised

2.37 Respondents agreed that payment deferrals agreed under this guidance should not be reported as missed payments to credit files. Industry representatives emphasised the importance of resuming accurate and consistent CRA reporting to help ensure responsible lending decisions. One firm raised concerns about the impact of extending the period of 'masking' on the integrity of data held by CRAs. On the other hand, one consumer group was concerned that firms have access to other sources of data to identify customers who have taken payment deferrals and noted that our approach would have a limited impact on future lending decisions.

Our response

2.38 The suspension of normal CRA reporting was an exceptional temporary measure introduced at the outset of the crisis to help minimise the impact on consumers who are able to get back on track after temporary payment difficulties arising from coronavirus. This approach cannot continue indefinitely as accurate CRA reporting is crucial to ensuring firms have confidence in the integrity of the credit reporting system and can make responsible lending decisions, which is essential to prevent over-indebtedness. However, it is important that customers needing support and taking deferrals now, are treated consistently with those who took deferrals at the start of the crisis. We do not therefore intend to amend our guidance on CRA reporting of payment deferrals agreed under our Payment Deferral Guidance. We remind firms that normal CRA reporting applies for other support provided, including further payment deferrals agreed under our Tailored Support Guidance and periods in between payment deferrals agreed under our Payment Deferral Guidance. Firms should explain the credit file implications of any further support.

Tailored forbearance

2.39 In September, we published additional guidance setting out the tailored support that firms should provide to borrowers who had benefitted from payment deferrals and remained in financial difficulty, as well as those who were newly affected by coronavirus. We proposed some changes to this guidance including changes to the repossessions section. Under this guidance firms should consider a range of short and long-term forbearance options to support customers who are no longer eligible for payment deferrals under our guidance. This may include short-term payment deferral arrangements where the firm allows the customer to make no or reduced payments for a specified period.

Issues raised

2.40 Respondents were generally supportive of the proposals in our Tailored Support Guidance that firms offer tailored forbearance to assist consumers including where they have had the maximum number of payment deferrals available to them under the Payment Deferral Guidance. Some consumer representatives raised concerns about the operational capacity of firms to deliver this, and the forbearance options available.

Our response

2.41 We do not propose to make any further substantive changes to the Tailored Support Guidance. We have updated it to clarify its relationship with the Payment Deferral Guidance. We are aware that there may be delays in firms providing forbearance due to resourcing constraints within firms resulting from the impact of the coronavirus. The extension of payment deferrals under the Payment Deferral Guidance for those who have not yet had them, or who have not yet accessed them for 6 months, should reduce pressure on firms and enable them to focus resources on those who have already experienced prolonged payment difficulties, including as a result of coronavirus.

Relationship with interest-only

Issues raised

2.42 Some firms and industry representatives asked for clarification on how the proposed guidance on payment deferrals interacts with the guidance issued in PS20/11: *Removing barriers to intra-group switching and helping borrowers with maturing interest-only and part-and-part mortgages*. This allows any borrower with an interest-only mortgage that matured between 20 March 2020 and 31 October 2021 to delay the repayment of capital until 31 October 2021, providing they continue to make interest payments.

2.43 In PS20/11 we said that anyone who had taken a payment deferral before their mortgage matured would be treated as up to date with their payments and therefore eligible to delay capital repayment. Once the mortgage matures, the customer must maintain their monthly interest payments as a condition of being able to delay repaying the capital. Some firms said that our guidance should allow customers to take a payment deferral after maturity without this having an impact on their ability to delay the capital repayment. Other industry representatives disagreed and said that this should disqualify them and that they should only be able to have the benefit of deferring payments or capital repayment but not both.

Our response

2.44 We note that a customer may be struggling to pay their monthly mortgage commitment and also struggling to realise their repayment strategy. We do not consider it fair or appropriate that they have to choose to take advantage of one measure of support at the expense of the other. We therefore confirm in the Payment Deferral guidance that a customer can defer up to 6 monthly payments under our Payment Deferrals Guidance without impacting on their ability to defer capital repayment under our separate guidance in PS20/11.

2.45 We have also amended paragraph 11 of the guidance in PS20/11 to reflect this.

Other issues raised and our response

Vulnerable consumers

Several respondents noted the need for firms to focus on vulnerable consumers, and to ensure that these consumers are treated fairly. Our guidance is clear that we continue to expect firms to treat their customers fairly, with a particular focus on those who are most vulnerable.

Mortgage affordability assessments

2.46 Two responses specifically mentioned mortgage prisoners, and concerns that should these consumers fall into arrears then they would not be eligible for the modified affordability assessment. Lenders can choose to carry out a modified affordability assessment where a consumer meets certain criteria including not being in payment shortfall (for the past 12 months) and not wanting to borrow more (other than to finance relevant fees). Demonstrating the ability to keep up to date with mortgage payments over a significant period is key to the protection offered by the modified affordability assessment. It provides an indication of the consumer's likely ability to make future, lower payments under a more affordable mortgage. Without this, there is a material risk that the new loan could prove unsustainable for the borrower. We are clear that borrowers should not be considered to be in payment shortfall where they have benefitted from a payment deferral period taken out under our guidance and are able to resume payments. However, we do not consider it appropriate to change our rules so that a borrower that cannot afford to resume payments after benefitting from payment deferrals should be eligible for the modified affordability assessment.

Buy to let mortgages

2.47 One industry stakeholder asked for further clarification around the application of the guidance to buy to let mortgages. They were concerned that landlords could be benefitting from the guidance without their tenants also benefitting.

2.48 As with our previous coronavirus related mortgage guidance, our latest amended guidance starts from the basis of the activities that Government and Parliament have asked us to regulate. In respect of mortgages, the protection is intended for borrowers where they have secured a loan against their own residential property. Most buy-to-let and business loans are likely to be unregulated

2.49 As with our previous payment deferral guidance, we currently anticipate that authorised lenders will extend these further payment deferrals to customers who have unregulated buy-to-let loans, and if they do not do so this could have an adverse effect on satisfying the threshold conditions.

2.50 If the firm is unregulated, they still have to comply with general consumer protection law and our guidance could be relevant to the standards of skill and care that may reasonably be expected of lenders in the mortgages market in the current exceptional circumstances of coronavirus. If, therefore, a lender does not follow this guidance, that could call into question whether they are meeting the requirements of general consumer law, even if the lender is not regulated under FSMA.

Application of updated guidance

2.51 One industry representative asked for clarification that the paragraph in the draft Payment Deferrals Guidance requiring firms to review whether the outcome a customer had received before the guidance came into force applied only retrospectively from 1 November, given the previous guidance expired on 31 October. The final Payment Deferral Guidance clarifies that this applies if a firm dealt with a customer at the end of a payment deferral between 31 October and when this latest amended guidance comes into force. A firm should review whether the outcome the customer has received or will receive is equivalent to or more favourable than what the customer would likely receive under this guidance as updated (paragraph 1.22).