FS 20/6 Temporary financial relief for customers impacted by coronavirus: feedback on draft guidance for mortgages

2 June 2020

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1 Summary

1.1 On 22 May we published draft guidance on the fair treatment of home finance customers in temporary payment difficulty as a result of the current exceptional circumstances arising out of coronavirus (Covid-19). This draft guidance set out our expectations on firms to:

- grant payment deferrals, or other forms of support, to home finance customers in temporary financial difficulty
- ensure fair treatment of customers at the end of any payment deferral period, including by providing the option of a further full or partial payment deferral where they need one
- continue to cease any repossession proceedings

1.2 We wanted to act quickly to protect consumers in these difficult times and, therefore, did not formally consult on the proposals or produce a cost benefit analysis. We consider that the delay in doing so would be prejudicial to the interests of consumers. However, we invited comments on our proposals and we received 44 responses from firms, trade bodies, consumer groups and individuals. This document summarises the feedback we received on our proposed measures and our response.

1.3 The majority of respondents supported the proposals. Almost all respondents acknowledged that consumers in temporary financial difficulty continue to need support. There was strong support for keeping the period in which a consumer could apply for a payment deferral open until October 31. There was also strong support for the extension of the period during which no steps towards repossession should be taken.

1.4 Some respondents asked for clarification on the intent of the draft guidance and, in particular, the extent to which firms and customers could agree forms of support other than a full or partial payment deferral. Respondents also raised several questions about how our new guidance built on areas already covered in our existing coronavirus mortgage guidance. We have taken the responses into account in finalising the guidance, as set out below.

1.5 The guidance supports our consumer protection objective and is designed to protect consumers by providing them with temporary support in the light of the current exceptional circumstances arising out of coronavirus. 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.

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

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

- clarify that firms can agree with customers forms of support other than a payment deferral or partial payment deferral, where it is in the customer's best interests
- clarify that where there is a disagreement between the customer and the firm about the amount the customer can afford to repay, the lender should reduce payments to a level the customer considers they can afford
- include customers in payment shortfall within the scope of all aspects of the guidance
- clarify the information firms should provide to enable customers to make informed choices.

1.8 The guidance affects home finance providers and administrators. It also affects authorised firms in respect of unregulated agreements to provide credit that is secured on land. It is also relevant to obligations that authorised and non-authorised persons might have under general consumer protection law.

1.9 This document sets out the key issues raised and our response.

Next steps

1.10 The guidance comes into effect on 4 June 2020.

1.11 The guidance expires on 31 October 2020 unless it is renewed or updated before then. We will keep the operation of the guidance under review, having regard to the evolving coronavirus situation and will bring forward further measures if necessary.

2 Key issues raised and our response

General

2.1 Responses from consumer groups and charities showed broad support for our proposals. They also raised a few concerns and asked for additional guidance in some areas. We had helpful responses from individual consumers, most of whom raised issues particularly affecting those borrowers often referred to as mortgage prisoners.

2.2 The responses from consumer groups and charities stressed that continued payment deferrals may not be in the customer's best interest, the importance of alternative forms of support, and the importance of highlighting this to consumers. They emphasised the need for a firm to consider a consumer's individual circumstances, and raised concerns over consumers not understanding the longer-term impacts, which could lead to confusion and potential consumer harm in the future.

2.3 These respondents also emphasised the importance of firms' communication with their customers when they come to the end of their payment deferral. They asked what steps firms should be taking and what channels of communication firms would be using to communicate with consumers, stressing that many vulnerable consumers may be less engaged with their finances, and so may require additional measures.

2.4 These responses called for a coordinated approach between the FCA and government, ensuring that there was a coherent approach to supporting consumers across the different regulated sectors of the economy. We continue to engage with the government and other regulators on this.

2.5 Industry and firm representative bodies were supportive of the updated guidance but sought clarity on several areas.

2.6 The key issues raised by respondents are set out below along with our response.

Scope

Issue raised

2.7 Respondents asked about the application of our guidance to certain customers or types of product.

Our response

2.8 Our guidance applies to all regulated home finance lenders and administrators.

2.9 In our guidance, we have also said that we will have regard to whether and how authorised firms act in accordance with our guidance in respect of their unregulated secured lending (such as buy-to-let loans). Smaller business borrowers, such as individuals or unincorporated partnerships, who are securing their borrowing against the home, or mixed-use property borrowers may have concerns similar to residential borrowers. If their borrowing is by way of a regulated mortgage they should benefit from the guidance. The guidance is not intended to apply to other business borrowing.

Full payment deferrals

Issues raised

2.10 Industry respondents were concerned about a perceived emphasis in the guidance on full payment deferrals over partial payment deferrals or other forms of support that may be in a customer's best interests. They suggested this could result in firms defaulting customers to a full payment deferral without offering, or having important individual conversations with customers about, partial payment deferrals or other forms of support. They felt it was inconsistent with our public message that those who could afford to pay should do so.

2.11 Industry respondents also felt the test they needed to meet to agree a form of support other than a payment deferral was too high. The draft guidance said that firms should only offer an alternative to a payment deferral where 'it can demonstrate that such a deferral is obviously not in the customer's best interest and a different option is more appropriate.' We gave an example that a payment deferral would obviously not be in the customer's interests if it would give them a greater overall debt burden compared to other solutions that could equally meet the customer's needs, and lead to an unsustainable debt burden. Lenders felt this was a difficult test to meet even in cases where an alternative form of support would be in a customer's best interest. Some lenders were unclear if the references in the guidance to payment deferrals also covered partial payment deferrals.

Our response

2.12 We agree that where a customer can afford to pay it is generally in their best interest to do so. An example could be a customer whose income has not been at all impacted during the coronavirus situation. However, even here there will be circumstances when a further deferral may be the most appropriate course. This could be because the customer expects that their income will shortly be affected, their household income has changed, or their expenditure has gone up through supporting others affected by coronavirus or in extra childcare costs.

2.13 We have changed our guidance so that it is clearer that it applies to full or partial payment deferrals, based on what the customer considers they can currently afford to repay.

2.14 We agree that lenders that can do so should be able to have individual conversations with customers about the appropriate form of support. And where a customer considers they need a different form of support (for example, re-mortgaging with a term extension or to a lower interest rate), we want a lender to be able to agree that easily.

2.15 We have changed our guidance to make clear that a firm can agree another form of support with the customer where it is in their best interest. This provides greater scope for the customer to agree an alternative form of support with their lender. However, where a customer and a firm cannot agree on a repayment amount, or an alternative form of support, the full or partial deferral requested by the customer should be granted.

Treatment of customers in payment shortfall

Issues raised

2.16 Our draft guidance applied to borrowers up to date with payments and those already in payment shortfall. It proposed that customers in payment shortfall seeking a second payment deferral should be supported by the protections contained in our Mortgage Conduct of Business Sourcebook rules (Chapter 13) rather than a further payment deferral under our guidance.

2.17 Many respondents, including both firms and their representative bodies, and consumers and consumer groups, suggested this was unfair and inconsistent with the principle that customers in payment shortfall should be treated no less favourably than other customers. They considered that customers in payment shortfall should not be prevented from getting a further payment deferral, provided they were given the same information on the implications of doing so.

2.18 **Our response**

We have amended our guidance to allow customers in arrears to choose a second payment deferral in the same way as other customers. We include an example in the guidance that for some customers in arrears a payment deferral may not be in their best interest. This is designed to support important conversations between the firm and the customer about where other support would be more appropriate.

Information for consumers

Issues raised

2.19 Our previous guidance requires firms to give general information to a customer about the impact of taking a payment deferral. This reflected the initial operational constraints firms were facing in giving payment deferrals to a significant number of consumers. The current guidance also required that a firm give the customer personalised, specific information on the impact on a customer's monthly payments before the customer agrees to capitalise the cost of the deferral.

2.20 Our draft guidance proposed that, for further deferrals, firms should give the customer personalised information before the customer took a deferral and before they agreed how to repay.

2.21 Some firms have said that a different approach for the initial and further deferrals could be confusing. A large number of firms said they cannot give completely reliable personalised information until the planned change to monthly payments is entered onto their systems.

Our response

2.22 We agree that the information given to customers should be the same at both stages mentioned above. And we consider that personalised information is important in ensuring customers can make informed choices. However, our Handbook already recognises that giving exact information on price on a forward-looking basis can be difficult. In the guidance, we have reiterated that personalised information is required both before taking out a deferral and to help decisions at the end of one, but that this may be a reasonable estimate. For example, a firm could use a mortgage deferral calculator to produce the tailored information for a customer. A firm might also make a reasonable assumption about the starting date of a deferral when producing this information.

2.23 We have also made clear that personalised information is required for a full payment deferral but the impact of partial payment deferral can be given in general terms and with reference to the impact of a full deferral (ie that it will cost proportionately less). This reflects the operational challenges we know firms face in giving personalised information on a partial payment deferral.

2.24 We do not expect personalised information to be sent out retrospectively for deferrals already given.

Mortgage prisoners

Issues raised

2.25 A number of respondents, many of whom were individual consumers, asked us to ensure that all customers, including those whose mortgages were owned by unregulated entities and mortgage prisoners, were offered the same options as borrowers with regulated lenders. They felt, in particular, that these customers should have the ability to keep their mortgage payment the same by paying off the shortfall arising from a payment deferral through extending the mortgage term, without being subject to affordability checks.

2.26 Other respondents proposed more significant interventions. These included a price cap on standard variable rates, a direction that lenders should implement the modified affordability assessment by July, a longer-term restriction on repossessions for customers with interest-only mortgages who can make their monthly payment, a ban on sales of mortgage books to unregulated entities, and a ban on charges for arrears and late payment fees. Respondents also said that lenders should facilitate internal product transfers, where the lender offers another product with a lower interest rate, for customers at the end of a payment deferral.

2.27 Respondents emphasised that mortgage prisoners are at particular risk of detriment as a result of paying higher interest rates and being unable to access the certainty of fixed rate mortgage offers. Some also made clear that some mortgage prisoners are vulnerable and suffer anxiety and mental distress.

Our response

2.28 We have made clear that the guidance applies to all regulated home finance lenders and administrators where legally they are able to comply. We also expect that unregulated entities which own mortgage books should also follow it, as it is relevant to the obligations they have under general consumer protection law to observe standards of professional diligence.

2.29 We agree, that where legally possible, a term extension to maintain payments at a level similar to the level prior to the deferral should be considered for all borrowers who can afford to make such repayments from the end of a payment deferral. The only exception is where this would take the customer into retirement. In these cases, a firm may still offer such an extension, but only where the firm considers that it is in the customer’s best interests to do so.

2.30 A term extension may not be possible where it means entering into a new contract and the entity involved is not authorised to do this. We think such circumstances are likely to be rare, but any firm that is unable to offer a term extension in these circumstances should contact us.

2.31 We do not agree that firms should be discouraged from considering the affordability of different options for resuming payments as this can help in identifying what may be in a customer's best interests.

2.32 We have been working to support mortgage prisoners in a number of ways over and above this guidance. This work has continued during the disruption caused by coronavirus.

2.33 We made changes to our rules in October 2019 to make it easier for mortgage prisoners to switch to new lenders given that they are unable to access an internal product transfer. The success of these changes depends on lenders offering new switching options to these customers. As soon as the mortgage market recovers from the impact of coronavirus we expect to see lenders offering these options to eligible borrowers.

2.34 In May, we wrote to some firms to reiterate that customers with higher risk characteristics on variable rate mortgages taken out before the financial crisis must be treated fairly, and that lenders should be actively reviewing their rates. We have reminded firms administering books on behalf of lenders of their obligation to treat customers fairly where they have discretion to set rates on behalf of the lender.

2.35 Where they do not, we expect the unregulated entity to comply with general consumer protection law including the Consumer Protection from Unfair Trading Regulations 2008. This includes having regard to the standards of professional diligence and our expectations of lenders across this sector to review their rates in light of current circumstances.

2.36 We made clear that we will act where we see outlier rates and consider the practices to be unfair.

2.37 We are considering what further actions may be necessary to support mortgage prisoners and other mortgage borrowers affected by coronavirus. We will consider carefully the feedback we have received and expect to say more in the coming weeks.

Credit files

Issues raised

2.38 Respondents raised a wide range of issues relating to the reporting of payment deferrals to credit reference agencies (CRAs) and the potential impact on credit files. Industry respondents, including CRAs, raised concerns around the risks associated with further 'masking' of credit files, including that this could impede accurate and responsible credit decisioning. Some suggested that firms should be allowed to record 'arrangements' on credit files for further payment deferral periods to provide a more accurate picture of consumers' financial position. Consumer groups broadly supported our proposals and agreed that protection of credit files from negative reporting should continue for further payment deferral periods under our guidance.

2.39 Industry respondents and CRAs also raised a number of questions around the credit file implications of various scenarios that might arise at the end of payment deferral periods. These included the treatment of amounts accrued during payment deferral periods and the treatment of partial and interest-only payments. Industry and consumer groups also highlighted the risks of misunderstandings around the potential impact of payment deferrals on credit files and consumers' future credit prospects, as consumers may not appreciate the distinctions between credit files, credit scores and other sources of data used to inform lending decisions.

Our response

2.40 We recognise the importance of the integrity of credit reporting processes. However, we do not consider that it would be appropriate to record arrangements on credit files for further payment deferrals taken under our guidance, given the long-term impact this could potentially have. We are engaging with the CRAs and lenders to understand what alternative approaches may be possible for reporting temporary support provided to customers at the current time.

2.41 We have amended our guidance to provide more clarity around our expectations on credit reporting at the end of payment deferral periods. We consider that where, at the end of a payment deferral period, a mechanism to repay accrued amounts is agreed, this should not result in any negative reporting on credit files (e.g. recording of new arrears or arrangements). We would expect subsequent payment performance in relation to any new repayment terms to be reported in accordance with usual reporting processes.

2.42 Where any partial payments are made during payment deferral periods under our guidance, we would not expect this to result in negative reporting. Where customers are offered similar or other forms of support at the end of payment deferral periods, we expect firms to be clear about the credit file implications and ensure that a reasonable period of time is afforded to determine an appropriate solution with customers before reporting any new arrears or arrangements. We will work with CRAs and the industry to ensure that firms are clear about credit reporting expectations in relation to other scenarios that might arise.

2.43 We acknowledge that there is a risk of consumer misunderstanding in relation to these complex issues. We will seek to address this by providing clear messages to consumers that credit files and scores may be impacted by a wide range of factors, and that future lending decisions may take account of a range of information and reflect commercial risk appetites at that time. We have amended our guidance to state that firms should provide their customers with general information about the potential impact of payment deferrals on future lending decisions.

2.44 It is also important to recognise that the protection afforded to credit files under our guidance is not indefinite, and that negative reporting may occur in accordance with usual reporting processes once payment deferral periods have come to an end. This is ultimately in customers' interests as it will help ensure that future lending decisions are based on a more complete and accurate picture of their financial circumstances. However, we want to ensure that customers affected by these exceptional circumstances are treated fairly in future, and will consider what further work or guidance may be necessary to achieve this.

Repossessions

Issues raised

2.45 There was strong support for extending our expectation that firms should not commence or continue repossession action to 31 October 2020. There were a few comments about whether there were some instances where steps might still be taken, such as appointing a receiver of rent for buy-to-let mortgages. A few consumer responses suggested that we should specify a longer period during which action should not be possible. Finally, one trade body raised the possibility that it might not be possible for lenders to stop customers being notified of court dates where litigation had already started.

Our response

2.46 We have maintained the approach of the draft guidance, considering that unless there are exceptional circumstances, any form of repossession action is unlikely to be in the customer's best interests. We have shared the feedback on court action with the relevant Government department.

Prudential implications

Issues raised

2.47 Several lenders and trade bodies welcomed the consistency between the approach of our draft guidance and that published by the Prudential Regulation Authority (PRA). Respondents raised some detailed points on the expected capital or accounting treatment.

Our response

2.48 Where we have made changes to the draft guidance these do not in our view alter the likely prudential considerations. We have shared the feedback provided with the PRA.

Non-bank mortgage lenders

Issues raised

2.49 Non-bank lenders and trade bodies raised concerns that a continuation of payment deferrals may be particularly problematic given their funding models. Some respondents were also concerned that the guidance should have adequate regard to the potential for adversely impacting competition in the mortgage market.

Our response

2.50 Some of the concerns raised by non-bank lenders are based on the concern that it was difficult for lenders to offer alternative forms of support to a payment deferral. The amendments set out above will make clear that lenders are able to put forward other options where these are in the best interests of customers, and engage with borrowers on the importance of making payments where the borrower is able to.

2.51 While our guidance expressly delivers on our consumer protection objective, when developing it we have also been mindful of our objective to promote competition in the interests of consumers. We note the concerns expressed that some firms may be more impacted by our guidance than others. However, we consider it of particular importance in the current crisis to ensure where possible, a high level of consumer protection. We consider that in relation to this guidance, that outweighs the additional cost to some firms of implementing it.

2.52 We also consider that it is essential where possible that consumers receive the same high standard of protection, whatever the business model of their lender and that our proposals in this guidance strike a fair balance in current circumstances, between the interests of consumers and the interests of firms. Nevertheless, in the light of the representations that some firms have made, we invite firms that believe they cannot act in accordance with the guidance to contact us in good time.

Interaction with MCOB provisions

Issues raised

2.53 We did not receive many comments regarding the flexibility that already exists within our rules. Two trade bodies did question the scope for granting term extensions without giving advice.

Our response

2.54 The guidance reflects where the rules are tailored to make it easier for firms to offer forbearance. In addition, our sales standards rules (see MCOB 4.8A.10R and 4.8A.11G) already adopt a modified approach for term extensions and other forms of contract variation. This allows for execution-only sales even where there is spoken or other interactive dialogue, providing certain conditions are met.

Record keeping, monitoring and supervision

Issues raised

2.55 We only received a few comments on the need for firms to keep records of the processes used and the information (both generic and personalised) provided to consumers. We also did not receive many comments on the need for firms to monitor the arrangements they put in place to ensure that these achieve the desired outcomes. However, a few consumer respondents stressed that we should actively supervise the guidance.

Our response

2.56 Our guidance is intended to help both firms and consumers by building on the standards required by Principle 6, Principle 7 and MCOB 2.5A.1R in the exceptional circumstances arising out of coronavirus. These standards are central to our approach to ensuring mortgage customers receive an appropriate level of protection. The monitoring by firms, and the keeping of relevant records, will help to ensure this is achieved. Our supervisors will use this information to check that firms are acting in the customer’s best interests.

Readiness

Issues raised

2.57 Several respondents noted the number of mortgage payment deferrals that had been granted (more than 1.8 million) and the speed with which this had happened. Perhaps inevitably, it was recognised that there had been some initial teething difficulties for firms, and a few respondents were concerned that the same might be true regarding the draft guidance.

Our response

2.58 Our existing guidance was put in place for three months. When we published it, we said we would keep it under review, and a key part of this review has been working with the industry to understand firms' plans for what should happen at the end of a payment deferral. We have had regular and detailed discussions with trade bodies, firms and consumer representatives about all aspects of this. These discussions were key to developing the new guidance, giving us insights into the challenges for both firms and consumers.

2.59 We have acted quickly to publish this guidance ahead of the end of the great majority of payment deferrals and anticipate that lenders will be ready to act in accordance with it. However, any firm that considers that it is not able to do so should contact us in the usual way.

Debt help

Issues raised

2.60 We received positive feedback on the guidance on debt help and the accompanying information page for consumers. Respondents welcomed the guidance to help firms support customers to manage their money. Respondents raised a number of points, including:

- Concerns about the capacity of the debt advice sector to cope with referrals generated by the guidance and more generally.
- That the guidance should be cast more broadly than 'debt help' and also refer to money guidance. Respondents said that lender should signpost consumers in financial difficulties to money guidance at the earliest opportunity and not just focus on those who require formal debt advice. They felt that this 'earlier intervention' will enable consumers to avoid recourse to debt advice in future.
- That it should be compulsory for firms to refer to the consumer information in all their communications to customers and provide it in a prominent position on their websites.

Our response

2.61 We recognise concerns about the capacity of the debt advice sector to cope with the challenges of an increased number of people seeking debt help. As many consumers currently experiencing temporary financial difficulties as a result of coronavirus will not necessarily require formal debt advice, one of the objectives of the debt help guidance is to encourage firms to help their customers to understand their debt help needs and provide self-help steps where appropriate, rather than simply referring customers to debt advice organisations. We have amended the guidance to make this clearer.

2.62 We are also working closely with Government and the Money and Pensions Service (MaPS) as they consider how to address concerns about the capacity of the debt advice sector.

2.63 We do not consider it is necessary or appropriate to require firms to refer to the consumer information in all communications to customers. We know that some firms want to help their customers access debt help and money advice and some already have effective processes in place for doing so.

2.64 We also received detailed comments on the consumer information and are grateful to those respondents for their assistance in enhancing that information. We would like to thank MaPS who worked with us to develop the drafting.

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