

Guidance consultation

Bounce Back Loan Scheme – Pay as You Grow options and CONC 7 compliance

December 2020

1 Introduction

Summary

- 1.1 The Bounce Back Loan Scheme (BLS) is a government scheme which enables smaller businesses to access finance more quickly during the coronavirus outbreak.
- 1.2 On 24 September 2020, the Chancellor of the Exchequer announced the introduction of Pay as You Grow (PAYG) – a system providing flexibility for repaying a Bounce Back Loan. Borrowers are due to start full repayments (the loan and any interest) 12 months after taking out the loan.
- 1.3 As referred to on the British Business Bank's website, before first repayments are due on loans, lenders will contact borrowers and provide them with options to vary the terms on which they repay their loan. If they wish to, borrowers can choose to:
 - extend the term of their loan to 10 years
 - move to interest-only repayments for 6 months (this option can be used up to 3 times)
 - pause repayments for 6 months (this option can only be used if the borrower has made at least 6 repayments under the loan and this option can only be used once)
- 1.4 It is anticipated that BLS payments will be collected by firms that provide BLS loans (including P2P platforms) or by debt collection firms acting on their behalf.

About this guidance

- 1.5 This guidance is for firms collecting payments under a Bounce Back Loan where the collection of that debt is a regulated activity.
- 1.6 The FCA has rules to support the fair treatment of customers through the collections and recoveries process. In particular, our [Consumer Credit Sourcebook \(CONC\)](#) Chapter 7 sets out our rules for the treatment of customers who are in default or arrears difficulties. Under Principle 6, a firm must pay due regard to the interests of its customers and treat them fairly. Following this guidance will also help firms to demonstrate that they have treated their customers fairly.
- 1.7 CONC 7 applies to firms when they carry out regulated debt collection under BBLs. Collecting debts under BBLs may be a regulated activity where the borrower is a sole trader or small partnership, so CONC 7 and Principle 6 can apply to these types of borrowers. This proposed guidance aims to detail how firms can:
 - use and offer PAYG options in a manner compliant with CONC 7
 - recognise vulnerability and respond to the needs of vulnerable customers
 - assist borrowers who need debt advice
- 1.8 It is important for firms to understand our expectations in advance of collecting debts under BBLs.
- 1.9 Where CONC 7 does not apply to debt collection under BBLs, firms should see Chapter 5 of this proposed guidance regarding the Lending Standards Board's Standards of Lending practice for business customers.
- 1.10 This proposed guidance is without prejudice to the application of CONC 7 more generally.
- 1.11 This guidance will come into force on [date].

Outcomes we are seeking

- 1.12 In assisting customers in default or arrears difficulties, we want firms to deliver the following outcomes which align with CONC 7 outcomes:
 - Firms have due regard to the interests of their customers and treat them fairly.
 - Customers are treated with forbearance and due consideration.
 - Firms have clear, effective and appropriate policies and procedures for dealing with customers in payment difficulties and for those who the firm understands or reasonably suspects to be vulnerable.
 - Customers are allowed time to consider their options and, if necessary, seek debt advice before making a decision on the support they take. Customers are referred to debt advice if this is appropriate. Customers are not pressurised into repaying their debt within an unreasonably short period of time.
- 1.13 In **Chapter 2** we set out how firms may comply with CONC 7 when offering PAYG options to borrowers.
- 1.14 In **Chapter 3** we provide guidance on how firms can recognise vulnerability and respond to the particular needs of vulnerable customers.

- 1.15 In **Chapter 4** we set out the steps that firms can take to assist borrowers who need debt advice.
- 1.16 In **Chapter 5** we remind firms of our recognition of the Lending Standards Board's (LSB) Standards of Lending Practice for business customers.

Who this applies to

- 1.17 These consultation proposals will apply to:
- firms providing Bounce Back Loans
 - debt collection firms working on behalf of lenders collecting and recovering Bounce Back Loans
- 1.18 It will also be of interest to:
- groups representing small businesses and small business borrowers, such as sole traders and small partnerships
 - debt advice bodies providing advice to the self-employed

Equality and Diversity

- 1.19 We are required under the Equality Act 2010 to have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Act, advance equality of opportunity between persons who share a relevant protected characteristic and those who do not, and to foster good relations between people who share a protected characteristic and those who do not. As part of this, we ensure we consider the equality and diversity implications of any new policy proposals. We do not consider this guidance will adversely affect consumers with protected characteristics.

How to respond

- 1.20 Comments on this draft guidance should be sent to us by 10:00 am on 18 December 2020. Please send your comments to: FCASmallBusinessUnit@fca.org.uk
- 1.21 There is no statutory requirement to prepare a cost benefit analysis for guidance.

2 Providing CONC 7 compliant outcomes for borrowers

- 2.1 The Chancellor has set out that PAYG options will be available to all BBLS borrowers. This includes those whose payments are up to date, or not yet due, as well as those who are in default or arrears difficulties, for the purposes of CONC 7. This guidance sets out how firms can comply with CONC 7 when providing PAYG options to borrowers who are in default or arrears difficulties.
- 2.2 Under Principle 6, a firm must pay due regard to the interests of its customers and treat them fairly. Following this guidance will help firms demonstrate they have

treated their customers fairly. The delivery of fair and appropriate outcomes for BBLB borrowers is our key objective.

CONC 7.3.4R provision of forbearance and due consideration

- 2.3 Under our rules (CONC 7.3.4R), firms are required to treat customers in default or arrears difficulties with forbearance and due consideration. For the purposes of this chapter and Chapter 3, '**customers**' refers to customers who are in default or arrears difficulties.
- 2.4 In this section, we set out our expectations where CONC 7 applies for how firms can provide forbearance and due consideration when providing their customers with PAYG options. We outline how firms should approach offering forbearance and support for customers. We also outline the need to support these customers to choose between PAYG options and enable them to opt-out of any digital journey if needed.
- 2.5 Firms can use PAYG options to provide appropriate forbearance and support for customers. For many customers, PAYG options will provide the appropriate forbearance they need. But, these options may not be appropriate – or may not be appropriate without additional support – for all customers or in all circumstances. So, in meeting CONC 7.3.4R obligations firms should consider where additional forbearance options are required.
- 2.6 In considering appropriate forbearance, firms should have regard to CONC 7.3.5G which provides examples of treating customers with forbearance. Examples could include the firm, as relevant in the circumstances:
 - Considering suspending, reducing, waiving or cancelling any further interest. For example, when a customer provides evidence of financial difficulties and is unable to meet repayments as they fall due or is only able to make token payments, where in either case the level of debt would continue to rise if interest continues to be applied.
 - Accepting token payments for a reasonable period of time in order to allow a customer to recover from an unexpected income shock. For example, a sole trader who demonstrates that meeting their existing debts would mean not being able to meet priority debts or other essential living expenses (such as mortgage, rent, council tax, food and utility bills).
- 2.7 Firms should have clear, effective and appropriate policies and procedures for dealing with customers. Regardless of the delivery channel or the communication channel used, customers should all be dealt with in a manner that supports them and leads to appropriate and fair outcomes.
- 2.8 We recognise that lenders may want to design systems to help support the potentially large number of customers needing support through periods of financial difficulties. One way to do this would be to use a digital journey through which customers can access the PAYG options pre-arrears and appropriate forbearance when in arrears, which may include the PAYG options.
- 2.9 A digital journey can be compatible with our rules provided it identifies and offers further support to customers who may need forbearance options in addition to PAYG. It also needs to support customers to make informed choices and should support

vulnerable customers. All customers should have the option to opt-out of the digital customer journey if they choose to.

Identifying and supporting customers in financial difficulties

- 2.10 Firms may choose to automate all or part of the customer journey for PAYG options. In doing so, they should ensure that the digital journey has processes to help identify borrowers in default or arrears difficulties and ensure that there is a mechanism for these borrowers to request a bespoke conversation with the lender so appropriate forbearance and support can be offered. Doing so will help firms to demonstrate that they have treated customers with due consideration – a key part of CONC 7.3.4R – and will allow the firm to act promptly and efficiently to address the situation with the customer.
- 2.11 In addition to identifying customers in relation to their BBLs loans, these processes should seek to identify any wider financial difficulties those borrowers may have, particularly where the lender holds little background information about them.
- 2.12 Lenders can use filtering, or triaging, whereby customers are asked questions about their financial situation to identify customers who need a bespoke discussion with the lender. Appropriate filtering, and the provision of appropriate bespoke discussions when needed, will help firms to demonstrate that customers have been given due consideration, and have been treated fairly. Discussions with borrowers around financial difficulties are likely to require investigation of the borrower's overall circumstances and should not be restricted to discussion only of the BBLs loan.
- 2.13 Under our rules – CONC 7.2.1R(1) – firms must also establish and implement clear, effective and appropriate policies and procedures for dealing with customers whose accounts fall into arrears.
- 2.14 Regardless of the delivery channel for PAYG options, the identification of borrowers in default or arrears difficulties could also be assisted by lenders having a policy of getting in touch with a customer who first misses a payment on their loan, or who misses a payment having already taken a PAYG option pre-arrears or forbearance option in arrears. Such an approach would be part of a firm's approach to meeting its obligations under CONC 7.2.1R(1).

Helping customer make informed choices before selecting PAYG options

- 2.15 We recognise that for many customers, PAYG options will provide the appropriate forbearance they need.
- 2.16 Helping customers to make informed choices when selecting PAYG options is one part of demonstrating that firms have treated customers with due consideration. It may also assist firms to demonstrate that they have treated their customers fairly. Customers should be informed of any changes in monthly payments and changes to the total cost of the loan that will result from using the PAYG options. This information should be personalised to illustrate changes to customers' monthly payments and total amount to repay. If personalised information is not available as part of any online journey, customers should be clearly directed to how and when such information will be made available (for example, by directing the customer to a repayment calculator).

- 2.17 For customers who would like additional information about an option or are uncertain as to which option might be most suitable for them, any digital journey should make it possible for them to speak to their lender to discuss their options.

Ability to opt-out of automated journeys

- 2.18 Lenders should keep in mind that there will be customers who, due to complexity of their financial situation, vulnerability, or personal choice, will need to speak to their lender to help them make an informed choice, before selecting a PAYG option.
- 2.19 Where lenders are automating the customer journey, providing clear opt-out functionality for customers to use will help lenders to demonstrate they have treated their customers with due consideration and treated them fairly. Opt-out functionality should be available for customers who decide that they do not want to continue with the journey, or they wish to have additional support by speaking to a member of the lender's staff.
- 2.20 Some customers may not engage with a digital journey. So, lenders should consider how they can provide support through non-digital channels.

Provision of repayment plans

- 2.21 As discussed in paragraph 2.5 while lenders can use PAYG options to provide appropriate forbearance and support for many customers, they may not be appropriate – or may not be appropriate without additional support – for all customers or in all circumstances. Therefore, customers, and those assisting them, may approach lenders asking them to consider alternative repayment proposals.
- 2.22 Debt counsellors or another person acting on the customer's behalf, should be able to request PAYG options and other options for the customer, and may help the customer to develop an alternative repayment plan or another reasonable proposal for repaying the debt.
- 2.23 We remind firms that they must not operate a policy of refusing to negotiate with a customer who is developing a repayment plan (CONC 7.3.9R) and that they should allow customers reasonable time and opportunity to repay the debt (CONC 7.3.6G). Recovery action must be suspended by firms for a reasonable period where the firm is informed that a repayment plan is being developed (CONC 7.3.11R).
- 2.24 We also remind firms that they must not pressurise a customer to repay a debt within an unreasonably short period of time or in unreasonably large amounts (CONC 7.3.10R). Any formal demand for the full outstanding balance should encourage borrowers to get in touch with the lender to discuss a repayment plan.

Effective oversight of third-party debt collection agents

- 2.25 We remind firms that where they use a third-party debt collection firm to collect payments under BBLs loan on their behalf, they should comply with our rules and guidance on outsourcing in SYSC 8.1, as well as CONC 1.2.2(2) and 7.12.3G(1) and other provisions as appropriate. They should also oversee the conduct of such third parties as set out in CONC 7.13.8G to 7.13.13R.

3 Support for vulnerable customers

- 3.1 For the purposes of this chapter, 'customers' refers to customers who are in default or arrears difficulties.
- 3.2 Our expectation is that the fair treatment of vulnerable customers will be embedded into the culture, policies and processes of firms. This expectation is not altered by the choice of delivery channel used. Firms should understand the impact of vulnerability on the needs of consumers in their customer base and how this may affect consumer experience and outcomes.
- 3.3 Customers experiencing financial difficulties may have characteristics of vulnerability, particularly low financial resilience. However, not all customers in arrears difficulties will be vulnerable, and some customers with characteristics of vulnerability will be at greater risk of harm than others.
- 3.4 Firms should take particular care to ensure they respond to the needs of customers at the greatest risk of harm. Firms could take a risk-based approach to developing their processes which recognises that some customers or cohorts of customers will require more support than others. Doing so is in line with CONC 7.2.1R(2) which provides that a firm must establish and implement clear, effective and appropriate policies and procedures for customers who the firm understands or reasonably suspects to be particularly vulnerable customers and to deal with such customers appropriately.
- 3.5 In order to understand and respond to the needs of vulnerable customers, firms are encouraged to take the following factors into consideration when developing their policies and procedures in respect of the BBS loan product, and the customer journey associated with it:
 - how to identify vulnerable customer needs and the ease with which customers can disclose their needs. In some cases, customers may not recognise themselves to be in vulnerable circumstances or may be reluctant to disclose their circumstances
 - how to provide communication channels that best meet customer needs
 - how to use communication channels, including digital channels, to proactively tell vulnerable customers about the support available to them
- 3.6 Firms will need to comply with their obligations under the Equality Act 2010 including in relation to customers with protected characteristics. In Northern Ireland, where the Equality Act 2010 does not generally apply, firms should ensure that they comply with any applicable legislation and FCA rules and guidance.
- 3.7 Firms may wish to have regard to the principles outlined in the Money Advice Liaison Group (MALG) Guidelines 'Good Practice Awareness Guidelines for Customers with Mental Health Problems and Debt'.

4 Referring customers for debt advice support

- 4.1 Customers who are in default or arrears difficulties may benefit from help to manage their credit payments, including BBLs repayments, or their business finances more generally.
- 4.2 Our guidance in CONC 7.3.7AG provides that if a customer is in default or arrears difficulties, a firm should where appropriate, inform the customer that free and impartial debt advice is available from not-for-profit debt advice bodies and refer the customer to a not-for-profit debt advice body.
- 4.3 Where customers could benefit from debt advice, we would expect firms to inform customers that free and impartial debt advice is available from not-for-profit debt advice bodies and refer the customer to such a body.
- 4.4 Firms should try to make such referrals as effective as possible, and should consider:
 - encouraging consumers to use digital tools, where appropriate
 - offering to transfer a consumer's call directly to a debt advice provider
 - whether the customer would benefit from a specialist source of debt advice – which may well be the case for a self-employed person, or a person running a business
 - the debt advice referral strategies highlighted in the Money Advice Service 'Strategic toolkit for creditors' – when dealing with non-corporate borrowers
- 4.5 Firms should tell customers that they can get not-for-profit debt advice and guidance through both digital and telephone services, and we would expect signposting and referral processes to take the full range of delivery channels into account. Firms should also highlight the availability of face-to-face services, where this is appropriate, but should help the customer, in line with paragraph above, to get debt advice through alternative means in case face-to-face services are not available.
- 4.6 Where firms handle customers through a digital or scripted process, we expect this to include appropriate signposting or referrals to debt advice or money guidance, as appropriate to the customer's needs.

5 Lending Standards Board's (LSB) Standards of Lending Practice for business customers

- 5.1 Where CONC 7 does not apply to debt collection under BBLs, firms should take account of the application of the LSB Standards of Lending practice for business customers.

- 5.2 The LSB is a self-regulatory body providing independent oversight of its registered firms' adherence to voluntary standards, with sanctions for material breaches.
- 5.3 The LSB Standards of Lending practice for business customers has been recognised by the FCA as being a code of conduct, which sets proper standards of market conduct for regulated firms undertaking unregulated activities within financial markets.
- 5.4 The LSB Standards outline the way firms are expected to deal with their customers throughout the entire product life cycle. This includes expectations regarding the treatment of customers approaching – and in – financial difficulty, together with customers in vulnerable circumstances.
- 5.5 Our Handbook explains that, in the context of unregulated activities, behaviour that is in line with a FCA-recognised industry code will tend to indicate compliance with rules that reference 'proper standards of market conduct' – see the Decision Procedure and Penalties Manual (DEPP) 6.2.1G(4A). Therefore, for example, following a recognised code will be one of the ways for a person to establish that they have observed proper standards of market conduct in relation to unregulated activities for the purpose of our Code of Conduct Sourcebook (COCON) 2.1.5R.

Annex 1 – Question asked in this consultation

Q1 – Do you have any comments on our draft guidance on how the use of the PAYG options can comply with CONC 7?