

## Draft guidance

# Mortgages and Coronavirus: Further Updated Guidance for Firms

November 2020

## 1 Introductory

### About this guidance

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- 1.1 This draft guidance sets out the proposed form in which the FCA would update the FCA's guidance ['Mortgages and coronavirus: Updated guidance for firms'](#) ('the June Guidance').
- 1.2 This draft guidance replicates the June guidance as it had effect on 31 October 2020 except for paragraphs 2.1, 2.2, 3.25 and 3.26, 3.37 and the section headed "Debt Help and Money Guidance", the deletion of the section headed "Repossession" (this is now dealt with in the FCA's guidance "Mortgages and Coronavirus: Additional guidance for firms") and the addition of this introductory section.

### Equality and Diversity

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- 1.3 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.
- 1.4 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

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- 1.5 We want to act quickly to continue to protect consumers who are experiencing or reasonably expect to experience payment difficulties as a result of circumstances relating to coronavirus. We consider that the delay involved in publishing a formal consultation accompanied by a cost benefit analysis would be prejudicial to consumers' interests. We are therefore not doing so. This is not a statutory consultation. There is no statutory requirement to prepare a cost benefit analysis for guidance.
- 1.6 We welcome comments from stakeholders on this draft guidance by **10am on Thursday 5 November**. Please send your comments to: [FCAconsumercredit@fca.org.uk](mailto:FCAconsumercredit@fca.org.uk)

## 2 Background

- 2.1 We originally published this guidance on 20 March 2020 and it was updated on 4 June and 16 June 2020. This further update comes into force on [ ] November 2020. We will keep this guidance under review and update as necessary. Unless renewed or updated, this guidance expires on 31 January 2021. However, where a customer is granted a payment deferral under this guidance that continues beyond 31 January 2021, the firm should act in accordance with paragraphs 3.12 – 3.24 and 3.27 – onwards, which remain in force to the extent necessary to enable it to do so. Guidance is relevant to firm behaviour only to the extent it is current at the time of the behaviour in question.
- 2.2 Where a firm has dealt with customers at the end of a payment deferral period before this updated guidance came into force on [ ] November 2020, it should review whether the outcome the customer will receive is equivalent to or more favourable than what the customer would likely have received under this guidance in its current form. If it is not, the firm should make reasonable efforts to contact affected customers and give them an opportunity to take up any further help under this guidance. Where a firm provides a further payment deferral in these circumstances we expect it to work with the customer and Credit Reference Agencies (CRAs) to ensure that any necessary rectifications are made to credit files to ensure no worsening status is recorded in respect of the period after the end of the initial payment deferral and before the further payment deferral is in place.
- 2.3 This guidance builds on Principle 6 ('A firm must pay due regard to the interests of its customers and treat them fairly'), Principle 7 ('A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading') and MCOB 2.5A.1R ('A firm must act honestly, fairly and professionally in accordance with the best interests of its customer'). It is potentially relevant to enforcement cases and the FCA may take it into account when considering whether it could reasonably have been understood or predicted at the time that the conduct in question fell below the standards required by Principle 6, Principle 7 and MCOB 2.5A.1R.
- 2.4 A firm is likely to contravene these rules if it acts in a manner inconsistent with this guidance. If an authorised person carries on activity in relation to an unregulated agreement to provide credit which is secured on land (such as an investment property loan under article 61A of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001), then acting in a manner inconsistent with the guidance below could have an adverse effect on satisfying the Threshold Conditions.
- 2.5 Where there has been an assignment of the rights under the mortgage contract to a non-authorised person, the person must still comply with general consumer protection law including the Consumer Protection from Unfair Trading Regulations 2008. A commercial practice may be unfair under those Regulations if (among other things) it contravenes the requirements of professional diligence. Professional diligence means the standard of special

skill and care which a trader may reasonably be expected to exercise towards consumers. The guidance below is intended to describe the standards of skill and care we consider 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 it is meeting the requirements of the 2008 Regulations, even if the lender is not regulated under FSMA.

- 2.6 In this guidance, 'payment deferral' means an arrangement under which a firm permits the customer to make no or reduced payments under a regulated mortgage contract or a regulated home purchase plan for a specified period without being considered to be in payment shortfall. A 'full payment deferral' is where the firm permits the customer to make no payments. A 'partial payment deferral' is where the firm permits the customer to make reduced payments of any amount.
- 2.7 A customer should have no liability to pay any default or arrears charge or other fee in connection with the grant of a payment deferral under this guidance. The continuing accrual of interest on sums owed under the mortgage contract that remain unpaid would not be inconsistent with this guidance.
- 2.8 This guidance applies in respect of a customer regardless of whether they are in a payment shortfall. Where a firm is already taking or has taken steps under MCOB 13 in relation to the customer, the firm should consider whether further complementary measures to help the customer are appropriate in light of this guidance. Customers in payment shortfall should not receive less favourable treatment than other customers.
- 2.9 Firms may use a digital or scripted process to assess customer circumstances, offer payment deferral options up to 3 months and provide information to enable the customer to choose between these. When implementing this guidance, firms should take account of the particular needs of their vulnerable customers and adapt their communications approach and support to meet these needs. If using digital channels, firms should make it easy for customers less able to use these to access alternatives.
- 2.10 If you have any questions or concerns about this guidance, [contact us](#).

## 3 Payment deferrals

### Customers who have not yet had a payment deferral

- 3.1 Where a customer is experiencing or reasonably expects to experience payment difficulties as a result of circumstances relating to coronavirus, and wishes to receive a full payment deferral or partial payment deferral to reduce payments to an amount the customer believes they are currently able to afford, a firm should agree to this for 3 monthly payments. This is unless the firm agrees with the customer a different option that the firm reasonably considers to be in the best interests of the customer.
- 3.2 In considering what is in the customer's best interests, a firm should not have regard to its own commercial interests.
- 3.3 If a customer provides information suggesting they may be experiencing – or they reasonably expect to experience – payment difficulties as a result of circumstances relating to coronavirus, the firm should ask whether the customer would be interested in a full or partial payment deferral.
- 3.4 There is no expectation under this guidance that the firm investigates the circumstances surrounding a request for a payment deferral before agreeing one for up to 3 months. Firms can choose to make the enquiries they consider necessary in order to offer an alternative to a payment deferral that is in the customer's best interests, provided this does not cause undue delay.
- 3.5 Alternatives to a full or partial payment deferral for 3 monthly payments could include:
- offering a payment deferral of fewer than 3 months
  - offering the customer a sustainable longer-term solution, such as an extension of the term or an alternative product
  - offering more favourable forms of assistance to the customer, such as reducing or waiving interest
- 3.6 A payment deferral may not be in the customer's best interest if the customer is already in payment shortfall.
- 3.7 Where the customer and firm do not agree about the monthly payment a customer can afford, the firm should offer a payment deferral at the level sought by the customer.
- 3.8 A firm should give customers adequate information to understand the implications of any support offered, to enable them to make an informed decision. This should, where possible, include personalised information on the impact on their monthly payments and/or the term of their mortgage. This may be a reasonable estimate. For a partial payment deferral this

may be given by a combination of personalised information on the impact of a full payment deferral with an explanation that the impact of a partial payment deferral would be proportionately less.

3.9 Where a firm is not able to provide personalised information it should provide customers with the clearest information and assistance possible to help them understand the impact of their decision on their monthly payment and mortgage term and enable them to make an informed decision. In considering how best to provide this information and assistance a firm may wish to consider a combination of options such as:

- representative examples that are relevant to the customer's circumstances
- representative examples that a customer can be guided through (eg using an online tool), relevant to the customer's circumstances
- providing a calculator embedded on its website that will allow a customer to understand the impact on their own monthly payment, mortgage term, or both
- signposting to an external (to the firm) calculator that can be used by the customer to understand the impact on their own monthly payment, mortgage term, or both, and providing the customer with information on their loan balance, remaining term and interest rate so that this can be used in the calculator
- signposting to an external (to the firm) calculator and signposting to where customers can find reasonably up-to-date information on their loan balance, remaining term and interest rate so that this can be used in the calculator.

3.10 Where a firm is able to provide personalised information through some but not all communication channels, it should make this clear to customers so that they can choose to use channels where personalised information is available.

3.11 The firm should also include information of a general nature describing the consequences (if any) for the total amount payable under the mortgage contract and explaining that while a worsening status will not be reported to the customer's credit file in respect of any payment deferral taken under this guidance, lenders may take into account other information when making future lending decisions, including, for example, information provided by applicants or bank account information.

### **Fair treatment of customers at the end of a payment deferral period**

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3.12 A firm should ensure that the way it seeks to recover any sums covered by a payment deferral (including any increase in the total amount payable under the mortgage contract as a result) once the payment deferral period has ended is compatible with Principle 6 and MCOB 2.5A.1R.

- 3.13 Customers coming to the end of a payment deferral period will be in different financial circumstances. What is fair treatment will differ according to these circumstances. Firms should distinguish between those customers who:
- can resume full payments immediately
  - are currently unable to resume full payments due to circumstances arising out of coronavirus
  - have a payment shortfall.

### **Understanding customers' needs and circumstances at the end of a payment deferral period**

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- 3.14 Firms should take reasonable steps to contact their customers in good time before the end of a payment deferral period about resuming payments and to engage with them about their options when it expires.
- 3.15 This contact should inform customers of what will happen if they do not respond, including the impact on their next monthly payment. This should include:
- Information about default arrangements (if any) to capitalise the sums covered by a payment deferral. These arrangements may provide for capitalisation over the remaining term of the mortgage or a reasonable extension of the term alongside capitalisation (unless this would take the customer past retirement).
  - Informing customers that other options are available to repay any sums covered by a payment deferral and how to access these or further support.

### **Customers able to resume full payments**

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- 3.16 Many customers will be able to resume full payments at the end of a payment deferral period. A firm should contact customers in good time before the end of the payment deferral period with information about the resumption of payments and on how to access further support if needed. If the customer has not responded, the firm may proceed on the basis the customer is able to resume full payments.
- 3.17 The options to repay any sums covered by a payment deferral should include making a lump sum payment, and extending the term to maintain the customer's previous repayment levels (unless this would take the customer past retirement or is not legally possible). Access to these options can be wholly or partly through a digital or scripted process and may rely wholly on the customer's own assessment of their ability to resume repayments.
- 3.18 Before capitalising any sums covered by a payment deferral (whether over the original or an extended term) the firm should give the customer personalised information on the impact on their monthly payments or the term of the mortgage. This may be a reasonable estimate.

- 3.19 Firms should make clear that the customer could pay more over the lifetime of the mortgage as a result of capitalisation, compared to an alternative means of repaying these amounts, such as in a lump sum.
- 3.20 Firms are reminded that MCOB 13 includes specific provisions about the capitalisation of payment shortfalls, including that a firm must not automatically capitalise a payment shortfall where the impact would be material. This does not apply where a firm is only capitalising sums covered by a payment deferral.
- 3.21 Where customers have been treated as able to resume full repayments in line with this guidance, but subsequently miss the next payment due under the mortgage, we would expect firms to make further reasonable attempts to contact them.
- 3.22 Where the customer tells the firm they are unable to repay the missed payment and resume payments as a result of circumstances relating to coronavirus, the firm should offer them additional help in line with the following section of this guidance.
- 3.23 A firm may treat a customer who fails to respond to further communications after missing their first payment as being in payment shortfall in respect of the missed payment, and proceed in accordance with MCOB 13.

### **Customers unable to resume full payments and customers requiring a further payment deferral**

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- 3.24 Where, after an initial payment deferral, and at any time before their first monthly payment is due, a customer indicates they cannot currently resume full payments, a firm should offer a full payment deferral, or a partial payment deferral to reduce their monthly payments to an amount the customer believes they are currently able to afford for 3 monthly payments. This is unless the firm agrees with the customer a different option that the firm reasonably considers to be in the best interests of the customer.
- 3.25 Some customers may have resumed payments following an initial payment deferral, but may subsequently require further support. Where a customer experiences payment difficulties as a result of circumstances relating to coronavirus having resumed repayments since the expiry of their payment deferral a firm should offer a full payment deferral, or a partial payment deferral to reduce their monthly payments to an amount the customer believes they are currently able to afford for 3 monthly payments unless the firm agrees with the customer a different option that the firm reasonably considers to be in the best interests of the customer.
- 3.26 Paragraph 3.25 does not apply if the customer
- Agreed an alternative option to a further payment deferral at the end of their initial payment deferral.
  - Has not maintained contractual repayments under the mortgage throughout the period since the end of their initial payment deferral.



- 3.27 In considering what is in the customer's best interests, a firm should not have regard to its own commercial interests.
- 3.28 There is no expectation under this guidance that the firm investigates the circumstances surrounding a request for a further payment deferral before agreeing one for up to 3 months. Firms can choose to make the enquiries they consider necessary in order to offer an alternative to a payment deferral that is in the customer's best interests, provided this does not cause undue delay.
- 3.29 Alternatives to a full or partial payment deferral for 3 monthly payments could include:
- offering a payment deferral of fewer than 3 months
  - offering the customer a longer-term solution, such as an extension of the term or an alternative product
  - offering more favourable forms of assistance to the customer, such as reducing or waiving interest
- 3.30 A payment deferral may not be in the customer's best interest if the customer is already in payment shortfall.
- 3.31 Where the customer and firm do not agree about the level of payments a customer can afford, the firm should offer a payment deferral at the level sought by the customer.
- 3.32 A firm should give customers adequate information to understand the implications of any support offered, to enable them to make an informed decision. This should, where possible, include personalised information on the impact on their monthly payments and/or the term of their mortgage. This may be a reasonable estimate. For a partial payment deferral this may be given by a combination of personalised information on the impact of a full payment deferral with an explanation that the impact of a partial payment deferral would be proportionately less.
- 3.33 Where a firm is not able to provide personalised information it should provide customers with the clearest information and assistance possible to help them understand the impact of their decision on their monthly payment and mortgage term and enable them to make an informed decision. In considering how best to provide this information and assistance a firm may wish to consider a combination of options such as:
- representative examples that are relevant to the customer's circumstances
  - representative examples that a customer can be guided through (eg using an online tool), relevant to the customer's circumstances
  - providing a calculator embedded on its website that will allow a customer to understand the impact on their own monthly payment, mortgage term, or both
  - signposting to an external (to the firm) calculator that can be used by the customer to understand the impact on their own monthly payment, mortgage term, or both, and providing the customer with information on their loan balance, remaining term and interest rate so that this can be used in the calculator

- signposting to an external (to the firm) calculator and signposting to where they can find reasonably up-to-date information on their loan balance, remaining term and interest rate so that this can be used in the calculator
- 3.34 Where a firm is able to provide personalised information through some but not all communication channels, it should make this clear to customers so that they can choose to use channels where personalised information is available.
- 3.35 The firm should also include information of a general nature describing the consequences (if any) for the total amount payable under the mortgage contract and explaining that while a worsening status will not be reported to the customer's credit file in respect of any payment deferral under this guidance, lenders may take into account other information when making future lending decisions, including, for example, information provided by applicants or bank account information. If a customer who has agreed a partial payment deferral or a payment deferral of less than 3 months contacts the firm seeking further assistance before the end of the payment deferral period, the firm should offer them additional support in line with this section. This could include extending the payment deferral period to 3 months or reducing the agreed payment further including to a full payment deferral.
- 3.36 A firm should contact customers in good time before the end of the further payment deferral period with information about the resumption of payments and on how to access further support if needed. If the customer is able to resume full payments, the guidance on customers able to resume payments above applies.
- 3.37 If at the end of a further payment deferral period, the customer indicates that they continue, or reasonably expect to continue, to face payment difficulties as a result of circumstances relating to coronavirus, the firm should work with the customer to resolve these difficulties in advance of payments being missed. The firm should consider the need to agree a tailored plan leading to a sustainable outcome for the customer through, for example, extending the mortgage term, changing the mortgage type, or deferring payment of interest or capital. The FCA's "Mortgages and Coronavirus: Additional Guidance for Firms" provides further guidance on this.

### **Interaction with MCOB provisions**

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- 3.38 Unless otherwise specified, any sums covered by a payment deferral under this guidance should not be considered to be a payment shortfall.
- 3.39 We remind firms that where a firm varies the terms of a regulated mortgage contract or home purchase plan solely for the purposes of forbearance or to avoid a payment shortfall, MCOB 4.8A.19R and MCOB 11.6.3R(3) continue to have effect. These dis-apply restrictions on execution-only and requirements to assess affordability.
- 3.40 Where an existing regulated mortgage contract is being varied or other assistance is provided in line with this guidance, MCOB 7.6.28R and MCOB 7.6.28AR set out the required disclosure about any change in the payments due.

- 3.41 Where a new regulated mortgage contract is entered into, the standard MCOB requirements regarding new contracts apply. In respect of disclosure this means firms will need to issue an illustration.

### **Training, monitoring, record keeping and Credit Reference Agency reporting**

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- 3.42 Firms should ensure that staff are adequately trained to enable them to implement the firm's process for following this guidance.
- 3.43 Firms must keep records of how any process was designed sufficient to demonstrate that the options presented were consistent with customers' best interests. A record should also be kept of both generic information presented to all customers, and any personalised information presented to a particular customer.
- 3.44 Firms should record and monitor initial and further payment deferrals offered, any alternative measures provided, as well as any issues which might impede customers' ability to access the assistance required under this guidance. Firms should use this information to keep their processes for following this guidance under review to ensure that customers' interests are being met and to refine their approach.
- 3.45 Firm supervisors may request access to a firm's records and the outcomes of a firm's customer monitoring.
- 3.46 The payment deferrals described here should be regarded as being offered in exceptional circumstances outside of the customer's control. In accordance with the relevant Coronavirus Data Reporting Guidance published by the Credit Reference Agencies in consultation with SCOR, firms should not report a worsening status on the customer's credit file during any initial or further payment deferral period.
- 3.47 Where customers have been unable to reach timely agreement with firms for a payment deferral because of firms' operational difficulties and subsequently miss a payment which is reported to their credit file, we would expect firms to work with customers and Credit Reference Agencies to ensure that any necessary rectifications are made to credit files to ensure no worsening status is recorded in respect of the payment deferral period.
- 3.48 Firms should also ensure no default or arrears charges are levied in relation to payments missed in these circumstances.
- 3.49 Where at the end of a payment deferral period a mechanism to repay accrued amounts is agreed we would not expect this to result in any negative reporting (subject to subsequent payment performance being reported in the usual manner).
- 3.50 We expect firms to be clear about the credit file implications of other forms of support offered to customers at the end of payment deferral periods and to ensure that a reasonable period of time is afforded to determine an appropriate solution with customers before reporting any new arrears or arrangements to credit files.

## Debt help and money guidance

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- 3.51 Customers who are considering whether a payment deferral is right for them may benefit from being signposted to the [Money Advice Service's Navigator Tool](#).
- 3.52 At the point of granting a payment deferral or alternative option under this guidance, firms should help customers to understand what types of debt help or money guidance are available. They can do this by signposting or referring them to appropriate sources of guidance. This could include providing a link to our information page '[Dealing with financial difficulties during the coronavirus pandemic](#)' and to the [Money Advice Service's Navigator Tool](#).
- 3.53 Where customers could benefit from debt advice we would expect firms to inform the customer that free and impartial debt advice is available from not-for-profit debt advice bodies; and signpost or refer them to one or more sources of such free advice. Signposting can include providing a link to the Money Advice Service's [debt advice locator tool](#).
- 3.54 Firms should try to make any referrals as effective as possible, and should consider:
- encouraging customers to use digital tools, where appropriate
  - offering to transfer a customer's call directly to a debt advice provider
  - whether the customer would benefit from a specialist source of debt advice, such as making a self-employed customer aware of business debt advice providers
  - the debt advice referral strategies in the Money Advice Service [Strategic toolkit for creditors](#)
- 3.55 Firms should tell customers that they can get guidance or not-for-profit debt advice 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 to get debt advice through alternative means in case face to face services are not available.
- 3.56 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.
- 3.57 Some customers in short-term difficulty may feel they are able to deal with their own debts without needing full debt advice. For these customers, the firm may also wish to:
- Suggest the customer works out a budget. Firms may find it helpful to refer customers to resources mentioned in our [information page](#).
  - Explain to the customer that, for most people, it makes sense to pay essential expenses and priority debts before any discretionary expenses or non-priority debts. To see if this is right for them customers can use online guides such as the Money Advice Service '[How to prioritise your debts](#)' page.
  - Recommend the customer contacts all their creditors to discuss their repayments.

- 3.58 Firms should have regard to chapter 17 of PERG in our Handbook which provides guidance on the regulated activity of debt counselling.