# FS21/1 Feedback Statement Bounce Back Loan Scheme: guidance for firms on use of Pay as You Grow options

January 2021

Contents

# 1 Summary

1.1 The Bounce Back Loan Scheme (BBLS) is a government scheme which enables smaller businesses to access finance more quickly during the coronavirus pandemic.

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 stated on the British Business Bank's website, before first repayments are due on loans, lending firms 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 can only be used once).

1.4 It is expected that BBLS payments will be collected by firms that provide BBLS loans or by debt collection firms acting on their behalf.

1.5 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 our guidance on the use of PAYG options and CONC 7 compliance will help firms show that they have treated their customers fairly.

1.6 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. It is important for firms to understand our expectations before collecting debts under BBLS, where CONC 7 applies.

1.7 In December 2020 we published our draft guidance setting out how firms can comply with CONC 7 when providing PAYG options to borrowers who are in default or arrears difficulties. Our guidance aims to explain how firms can:

- use and offer PAYG options in a way that complies with CONC 7
- recognise vulnerability and respond to the needs of vulnerable customers
- help borrowers who need debt advice

1.8 We invited comments on our draft guidance. We received 9 responses from lenders, trade bodies and a consumer representative body.

1.9 This feedback statement summarises the feedback we received on our draft guidance and our response.

1.10 Our guidance advances our consumer protection objective. In assisting Bounce Back Loan customers in default or arrears difficulties, we want firms to deliver outcomes which align with CONC 7 outcomes.

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

## Summary of changes

1.12 We are now confirming the guidance as final subject to some clarification on:

- firms' obligations under CONC 7.3.4 to provide additional support beyond PAYG options where appropriate to customers in financial difficulty and/or vulnerable customers
- firms identifying customers in financial difficulty
- enabling customers to opt out of automated journeys involving the provision of PAYG options

1.13 We also make minor changes to the wording of the guidance on support for vulnerable customers and referring customers for debt advice support.

1.14 This guidance will apply to:

- firms providing Bounce Back Loans
- debt collection firms working on behalf of lenders collecting and recovering Bounce Back Loans

1.15 This guidance does not affect the application of CONC 7 more generally.

## Next steps

1.16 The Bounce Back Loans: guidance for firms on use of Pay as You Grow options comes into force on 27 January 2020. The guidance remains in force unless varied or revoked.

# 2 Key issues and our response

## General

2.1 We asked in the consultation:

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

2.2 Respondents welcomed the publication of our guidance. Given the unusual nature of the BBLS scheme and expectations about the use of PAYG options, they felt the guidance was helpful as they developed policies and processes for collecting BBLS debts.

2.3 There were however a number of issues raised or clarifications sought. We set out below (2.9-2.44) the key issues raised by respondents and our responses.

2.4 To summarise, respondents asked about our expectation of firms for CONC 7.3.4R – the requirement to treat customers in default or arrears difficulties with forbearance and due consideration. Lenders asked if there were situations in which PAYG options might be considered unsuitable for particular customers. Lenders also questioned our expectations for firms providing forbearance other than, or in addition to, PAYG options. The group of customers commonly referred to in responses are those who are in financial difficulty, and who may require forbearance additional to that offered by PAYG options.

2.5 Some respondents asked us to clarify the steps required to identify customers who might be suffering financial difficulties or those who might be vulnerable. This request was mainly due to concerns that lenders hold little information on individual BBLS borrowers and the high volumes of customers who may require support in the short to medium term.

2.6 Given the volume of BBLS customers, many lenders are looking at automating all or part of the customer journey. They asked about the circumstances in which customers could opt out from the automated process. In particular they asked us to clarify our requirements when the lender is a digital bank and customers would not normally speak to members of staff at the bank.

2.7 One respondent also asked about our expectations where firms outsource the collection and recovery of BBLS debt.

2.8 A number of respondents asked about the operation of the Government's BBLS scheme. Commenting on the scheme itself is outside of the scope of the FCA guidance. However, we have and will continue to engage with HMT and the British Business Bank as required in relation to the operation of the BBLS scheme.

## CONC 7.3.4R provision of forbearance and due consideration

2.9 A number of questions were raised regarding the obligations on firms to treat borrowers with due consideration and the requirement to offer forbearance other than PAYG options. In particular, some respondents interpreted paragraph 2.5 of the draft Guidance as suggesting that PAYG options might not be appropriate for some customers, which did not match their understanding that PAYG was intended to provide a comprehensive support package.

2.10 Two respondents asked whether the PAYG options were compatible with CONC 7.3.3G. This guidance provides that: unmade payments should be made within the original term of the agreement (to comply with Principle 6) unless the firm reasonably believes that it is appropriate to allow a longer period for repayment and has no reason to believe that doing so will increase the total amount payable to be unsustainable or otherwise cause a customer to be in financial difficulties. Since firms must accept a customer's request for PAYG options, these respondents asked how we would view compliance with CONC 7.3.3G in this scenario.

2.11 One firm stated that they would welcome our perspective on applying the forthcoming 'Breathing Space' regulations and how these are intended to be applied to BBLS loan repayments.

2.12 One firm suggested that the reference to accepting token payments in our guidance, as an example of treating a customer with forbearance, would be satisfied by accepting interest-only payments.

**Our response:**

Customers who are not in default or arrears difficulties

2.13 The requirement for a firm to treat a customer with forbearance and due consideration is triggered when a borrower is in default or arrears difficulties (CONC 7.3.4R). When payments on a customer's loan are up to date, customers are able to select PAYG options. In relation to BBLS, there is no requirement for firms to offer alternative restructuring options or forbearance when the customer is not in default or arrears difficulties.

PAYG options when used as forbearance options

2.14 For customers in default or arrears difficulties, it is expected that PAYG options will meet the needs of many borrowers, particularly those with short-term financial difficulties.

2.15 To help customers choose between PAYG options, it is important that firms follow the steps outlined in our guidance. This includes providing clear information to help customers choose between PAYG options and using filtering questions in the process so that customers who are in financial difficulty or uncertain about which PAYG option might be most suitable for them are able to communicate with their lender to discuss their options.

2.16 Through their response to these filtering questions or other engagement with customers, firms could become aware that their customers may be in need of forbearance support in addition to that provided by PAYG options. In these circumstances, the firms should inform the customer that additional support may be available to them. Firms should not limit the type of forbearance they can offer to these customers to just PAYG options but should have regard to the requirements of CONC 7. Where additional support is required over and above the PAYG options, firms should offer it.

2.17 We have also amended our guidance to clarify that while additional forbearance or other support may be required for some customers, we do not consider that, subject to any restrictions applied by the scheme itself and the application of our guidance, there are situations where PAYG cannot be offered.

2.18 Where a customer requests a PAYG option (but does not indicate that they might need additional support, or, if they are offered additional support, does not wish to avail themselves of it) then the lender can provide the PAYG option without needing to consider the customer's particular circumstances and should make the changes to the repayment terms promptly. We have made amendments to our guidance to reflect this.

2.19 Firms' obligations under CONC 7 will continue to apply after selection of a PAYG option by a customer. If a customer's situation deteriorates or the PAYG option proves to be insufficient, it is likely that payments will be missed. Paragraph 2.18 of our guidance states that firms should contact customers who default or fall into arrears to find out whether they are in financial difficulty and whether they require additional support, in particular, further forbearance. Taking action in this way is part of how firms can demonstrate that they are treating customers with due consideration and will form part of meeting their obligations under CONC 7.3.4R.

Token payments

2.20 We do not agree that interest-only payments are equivalent to accepting token payments. Accepting token payments is an example of treating a customer with forbearance under CONC 7.3.5G and generally envisages the customer paying a nominal amount. This is reflected in paragraph 2.6 of the guidance which is concerned with token payments being less than the interest that accrues. Firms should be willing to accept token payments or no payments for a period that involves a payment deferral in addition to PAYG options, where the customer's circumstances mean this kind of further support is required.

Extending loan terms under CONC 7.3.3G

2.21 For many customers, PAYG options will provide the appropriate forbearance they need. But these options may not on their own be sufficient for all customers or in all circumstances. We have set out our expectation that firms should offer additional forbearance beyond PAYG where they become aware that customers may need further support. We, therefore, consider that the option of extending the loan term to 10 years may be provided compatibly with CONC 7.3.3G.

Breathing Space

2.22 The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 (the Breathing Space Regulations) will give people in problem debt the right to legal protections from actions by creditors for up to 60 days. They are expected to come into force in May 2021. The regulations will also provide protection for a borrower for the duration of any mental health crisis treatment.

2.23 These regulations apply to sole traders who are not registered for VAT. This means a number of borrowers with a loan under the BBLS and who are entitled to a PAYG option will also be entitled to the additional protection of the breathing space provisions. This may be particularly helpful to those borrowers who may need time to get advice before they decide on the appropriate option to help resolve their situation.

## Identifying customers who are in financial difficulty

2.24 Some respondents asked us to clarify the steps required to identify customers who might be in financial difficulties. Lenders and a trade body asked for confirmation about whether firms should get additional information, particularly around income and expenditure from customers believed to be in financial difficulty before they agree PAYG options.

**Our response:**

2.25 We know that the non-standard application and assessment process for the BBLS scheme can mean lenders may hold very little information on individual customers.

2.26 Appropriate filtering, triaging, or questions designed to identify customers in financial difficulty that could be anticipated to lead to default or arrears difficulties should be built into the customer journey. Firms should also provide opportunities for customers to highlight any financial difficulties they may have. Firms can then consider appropriate support. For many customers the appropriate support will be PAYG options, but others may need additional support on top of that.

2.27 Firms should also act appropriately when other information, such as that which they get regularly from Credit Reference Agencies or from the conduct of customer's other accounts suggests that the customer may be in financial difficulty.

2.28 When a customer has requested a PAYG option, and filtering questions, triaging or other information suggests that the borrower may be in financial difficulties, the firm should offer a bespoke conversation or engagement to the customer with a view to better understanding the customer's circumstances or repayment ability. On the specific question of whether completing income and expenditure analysis or viability tests should be required in all cases - while this may be helpful, particularly to identify if the borrower requires additional support, firms cannot require borrowers to take up the offer of a bespoke conversation or engagement or require the customer to provide additional information as a pre-condition of providing PAYG options. It is ultimately the borrower's choice whether or not to use the PAYG options.

## Customer's ability to opt out of automated processes

2.29 A number of respondents asked us to clarify our intentions of allowing customers to opt out of an automated process, particularly when the lender is a digital bank.

**Our response:**

2.30 As covered in our draft guidance, a digital process can be compatible with our rules, but firms should ensure there is a mechanism for customers to request or take up the offer of bespoke conversation or engagement to discuss the PAYG options or their individual circumstances if they are in financial difficulty or are in any way vulnerable. This individual engagement can take place via telephone or digital channels such as in-app messaging, chat functionality or e-mail. Opting out of a digital process is about the automated nature of the process not the channel itself.

Following the individual engagement, the firm where appropriate can reintroduce the customer to the automated process to select a PAYG option.

2.31 We have made an alteration to our guidance to clarify that some customers may not want to opt out of the entire digital process but only some aspects of it at a particular time. We clarify that opt outs should be available for customers who decide that they do not want to continue with the automated process or some aspects of it at a particular time, or they wish to have additional support by communicating with a member of the firm's staff.

2.32 We further clarify that although some firms operate primarily through automated digital channels, some customers may not wish to engage with some aspects of the automated digital journey, particularly when they are facing financial difficulties or are vulnerable. So, firms should consider how they can provide appropriate support through non-automated channels.

## Support for vulnerable customers

2.33 Some respondents, including a trade body, asked us to clarify our expectations of firms when providing PAYG options to vulnerable customers. Lenders were uncertain if they were required to have additional conversations with vulnerable customers to ensure that the particular PAYG option was suitable for them. Respondents also asked about the terminology used in Chapter 3 of our draft guidance, particularly the word 'consumer'.

**Our response:**

2.34 As with our response regarding appropriate steps to take where a customer is believed to be in financial difficulties, where a firm believes that a customer is in any other way vulnerable, they should make reasonable attempts to better understand the customer's circumstances and needs and whether they require additional support. The choice of whether to use the PAYG options will ultimately remain with the customer.

2.35 In paragraph 3.2 of the draft guidance, we referred to 'consumers' as the concept of vulnerability applies to natural persons rather than to particular business entities. To avoid potential misunderstanding, we have amended reference to 'consumers' in paragraph 3.2 to 'borrowers' which should be taken to mean natural persons associated with the business, that would normally be the sole trader or partner(s).

## Referring customers for debt advice support

2.36 Two respondents felt that we should amend Chapter 4 of our guidance to reflect concerns about the numbers of small business customers that could be seeking debt advice and the resulting pressures on the debt advice sector. They also suggested that we amend para 2.17 of the guidance to reflect that if customers seek additional information about PAYG options and whether they are suitable for the customer's individual circumstances, the lender may refer the customer for debt advice at that point, if they consider it appropriate.

**Our response:**

2.37 We have considered the comments and concluded that Chapter 4 of the guidance is sufficiently clear that there are a range of delivery channels for debt advice, with focus being given to the fact that at specific times and in specific locations, face-to-face debt advice might not be available.

2.38 We have made the suggested minor amendment to para 2.22 of the guidance to include reference to referring customers where it is considered appropriate, to get debt advice support.

## Outsourcing

2.39 One firm highlighted that a number of firms are developing a collective recoveries programme for the recoveries and oversight of BBLS collections to help deal with potentially large volumes of cases. It asked for clarity on our expectations of this collective approach to recoveries.

**Our response:**

2.40 Our expectations of firms are consistent whether firms choose to use existing outsource arrangements on an individual basis or enter into a collective scheme. In either case each BBLS lender has ultimate responsibility for the fair treatment of its customers. So it is essential that they individually exercise appropriate oversight of the third parties they outsource this work to. As we set out in the Guidance, where firms use a third-party debt collection 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.

## Other issues raised

Credit reference Agency reporting

2.41 One respondent raised questions about CRA reporting requirements.

**Our response:**

2.42 The scope of our guidance is restricted to CONC 7 compliance. It is our understanding that HM Government will provide lenders with additional guidance on CRA reporting requirements for BBLS loans.

Fraud processes

2.43 A respondent also asked questions about processes for handling fraud, or suspected fraud, relating to BBLS loans.

**Our response:**

2.44 As our guidance is restricted to CONC 7 compliance, it is not appropriate for us to comment on fraud processes in this feedback statement.

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