11-12-2020

Mortgages and coronavirus: our guidance for firms

Financial Conduct Authority (FCA)

Mortgages and coronavirus: our guidance for firms

Read our guidance for mortgage lenders, mortgage administrators, home purchase providers and home purchase administrators as the coronavirus (Covid-19) situation develops. We are working with industry to ensure customers remain supported.

On 2 June 2020, we published an update to this guidance [1].

This guidance applies to mortgage lenders, mortgage administrators, home purchase providers and home purchase administrators.

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

We will review this guidance in the next 3 months in the light of developments regarding coronavirus and will issue amended guidance extending the period of the payment holiday if appropriate. Guidance is relevant to firm behaviour only to the extent it is current at the time of the behaviour in question. Please check this page for updates to this guidance.

This guidance builds on Principle 6 [2] ('A firm must pay due regard to the interests of its customers and treat them fairly') and MCOB 2.5A.1R [3] ('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 and MCOB 2.5A.1R.

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) [4], then acting in a manner inconsistent with the guidance below could have an adverse effect on satisfying the Threshold Conditions.

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.

If you have any questions or concerns about this guidance, contact us. [5]

Payment holidays

In this guidance, 'payment holiday' means an arrangement under which a firm permits the customer to make no payments under a regulated mortgage contract or a regulated home purchase plan for a specified period without being in payment shortfall.

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 payment holiday, a firm should grant a customer a payment holiday for 3 monthly payments, unless it can demonstrate it is reasonable and in the customer's best interest to do otherwise.

An example of a situation in which a payment holiday may be appropriate is where there is or will be a reduction in household income that can be used to make mortgage or home finance payments.

If, during an interaction between the firm and the customer, the customer provides information suggesting that the customer may be experiencing or could 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 payment holiday.

A firm may decide to put in place an option other than a 3 month payment holiday, if it is appropriate to do so in the individual circumstances of the case and the firm reasonably considers it as being in the best interests of the customer. This could include a payment holiday of fewer than 3 months if, for example, the expected loss of income is temporary, or a reduced monthly payment if, for example, the loss of income is partial. This guidance does not prevent firms from providing more favourable forms of assistance to the customer, such as reducing or waiving interest.

Firms can choose to make the enquiries they consider necessary in order to judge if a payment holiday best serves the customer's interests but there is no expectation under this guidance that the firm investigates the circumstances surrounding a request for a payment holiday.

A firm should give customers adequate information to understand the implications of a payment holiday, including the consequences (if any) for the total amount payable under the mortgage contract, the term of the mortgage contract and the amount of contractual monthly instalments.

We remind firms that the requirement to assess affordability does not apply 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.

A firm should, however, ensure that the manner in which it will seek to recover any sums covered by a payment holiday and any increase in the total amount payable under the mortgage contract once the payment holiday has ended is compatible with Principle 6. A firm should not capitalise these amounts without having given the customer information on the impact of doing so on their monthly payments or the term of their mortgage, and the option to choose an alternative means of repaying the amount. The information given should be provided in good time before the capitalisation takes place, and 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.

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. 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.

A customer should have no liability to pay any charge or fee in connection with the grant of a payment holiday 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.

The payment holidays described here should be regarded as being offered in exceptional circumstances outside of the customer's control. In accordance with section 8 of the Steering Committee on Reciprocity Data Quality Reference Guide, the account of the customer should not be recorded as having any form of detrimental arrears. There should be no negative impact on the customer's credit file because of the payment holiday.

A firm is likely to contravene Principle 6 and MCOB 2.5A.1R if it acts in a manner inconsistent with this guidance.

Repossessions

Firms should not commence or continue repossession proceedings against customers at this time, given the unprecedented uncertainty and upheaval they face, and Government advice on social distancing and self-isolation. This applies irrespective of the stage that repossession proceedings have reached and to any step taken in pursuit of repossession. Where a possession order has already been obtained, firms should refrain from enforcing it.

We consider that commencing or continuing repossession proceedings at this time is very likely to contravene Principle 6 and MCOB 2.5A.1R - absent exceptional circumstances (such as a customer requesting that proceedings continue). We will not hesitate to take appropriate action where necessary.

Firms should also ensure that their customers are kept fully informed, and discuss with them the potential consequential impacts of their suspending any moves towards repossession. For example, the effect of remaining in the property on the customer's remaining equity should be explained. See our information for consumers regarding mortgages during the coronavirus situation.

Page updates +

First published: 20/03/2020 | Last updated: 15/06/2020 | See all updates

Source URL: *https://www.fca.org.uk/firms/mortgages-coronavirus-guidance-firms*

Links

- [1] https://www.fca.org.uk/publications/finalised-guidance/mortgages-and-coronavirus-updated-guidance-firms
- [2] https://www.handbook.fca.org.uk/handbook/PRIN/2/1.html
- [3] https://www.handbook.fca.org.uk/handbook/MCOB/2/5A.html
- [4] http://www.legislation.gov.uk/uksi/2001/544/article/61/made
- [5] https://www.fca.org.uk/contact
- [6] https://www.fca.org.uk/coronavirus
- [7] https://www.fca.org.uk/firms/information-firms-coronavirus-covid-19-response