



BUY TO LET ARREARS AND POSSESSIONS INDUSTRY GUIDANCE UPDATE

JULY 2021



Industry guidance

Most buy-to-let (BTL) mortgages are unregulated and are not subject to the provisions of the FCA Handbook. The exceptions are consumer buy-to-let (CBTL) mortgages which are ‘a buy-to-let mortgage contract which is not entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower’.

Conduct standards apply to the sale, underwriting and administration of a CBTL mortgage. These include arrears management, so where the mortgage is a CBTL one, lenders should also refer to the relevant sections of the Handbook and the [guidance on arrears and possession](#) developed for regulated mortgages by UK Finance.

This guidance will be particularly helpful for unregulated BTL mortgages, which are not the focus of the guidance for regulated mortgages.

Lender policy

Lenders in BTL arrears cases are expected to act fairly towards the borrower and take the individual circumstances of each borrower into account. Except where there is immediate prejudice to either the property or to any occupant at the property, the lender should not seek to realise the security (including the appointment of a receiver) until all other reasonable attempts to resolve the position have failed. It is recognised, however, that sometimes it is in the interests of the tenants and lender to act more quickly.

There are many options available to lenders when realising security in BTL loans. Lenders should ensure that their policies allow for flexibility in approach and that their choice of enforcement action is appropriate in each case. Lenders should not adopt a “one size fits all” approach to BTL loans.

Each lender should have a written document setting out its policy and processes in relation to the handling of BTL arrears and possessions cases. These should be signed off by senior management. Suitable training must be given to ensure that staff are fully aware of the policy and of the different ways in which such loans can be dealt with. Appropriate information must be collated and provided to the lender’s board to allow them to assess whether BTL borrowers are being treated fairly and lenders’ policies should ensure this.

Forbearance

Where a customer has fallen into arrears, a firm should assess the causes and consider if the customer would be helped to recover from their arrears position through accessing a forbearance measure. If a customer is experiencing either a decline in rental income, an increase in costs, or both, then options should be explored with the customer to see if ownership could be maintained and arrears repaid while these challenges are addressed. Early intervention can be key to giving customers the best chance of repaying arrears and retaining the property.

Firms should adopt their forbearance procedures on a case by case basis, taking each customer’s situation into account. The key consideration should be whether a customer’s position is sustainable, and if they can maintain payments into the long term once the shortfall has been made up. Establishing the cause for the initial shortfall in payments is essential. Where rents are still being paid to a landlord, firms should encourage those funds to be channelled toward the debt they are intended to serve (i.e. the mortgage).

Following assessment, if it is decided forbearance is the right option firms should choose the approach that would best facilitate a sustainable recovery from the arrears position.

Lenders will have their own forbearance policies but typical options used in the industry include:

- **Extending the loan term:** In the case of a repayment loan, the term of the loan can be lengthened, although in most cases this does not make a significant difference to the monthly repayments.
- **Deferred payments:** The mortgage repayment may be deferred for a period. The due payments continue to accrue and must be settled by the customer at some point. This may be particularly appropriate where there is a temporary shortfall of rental income. Lenders may in certain circumstances be willing to accept, for a reasonable period, the most the borrower could reasonably afford. A firm would report this to the CRA as an arrangement.
- **Payment holiday:** This is where there is a deferred payment but no arrears accrue. A firm would also report this to the CRA as an arrangement.

- **Capitalise arrears:** This may be appropriate where arrears have built up, but full monthly repayments can be resumed. The amount outstanding (capital sum and arrears of interest) may be rescheduled and repaid over the life of the loan. This might have an impact on the interest rate charged and whether a repayment vehicle will repay the loan in the case of an investment-backed mortgage. Such an approach is unlikely to be adopted where the borrower has in the past failed to adhere to an alternative payment arrangement.
- **Concessionary arrangement – part and part:** This will happen when the customer pays part of the mortgage on a capital repayment basis and the remainder on an interest only basis. This type of arrangement will accrue arrears. As with full interest-only mortgages, the borrower should ensure that they are able to repay the mortgage at the end of the mortgage term and the lender should ensure that a repayment strategy is in place.
- **Concession – interest only:** A repayment loan may be changed to an interest-only mortgage with a possible subsequent reduction in monthly outgoings. This is usually offered for a short period of time to make payments more affordable. Borrowers who make a permanent switch to an interest-only mortgage should ensure that they are able to repay the mortgage at the end of the mortgage term and the lender should ensure that a repayment strategy is in place.
- **Interest roll-up:** This is occasionally offered when other forbearance options are considered unsuitable. The interest is added to the capital amount month-by-month. This will add to both the amount owed and the overall amount repayable.
- **Concessions – reduced interest rates:** In exceptional cases where the customer is financially vulnerable and unlikely to recover in the longer terms, firms may consider interest rate adjustments for a period or for the whole term.
- **Time to sell** – additional time may be provided to customers during which they can sell the property to meet repayments.

Key principles of good practice in forbearance processes:

- Contacting customers promptly when all or part of a payment is missed. This is to check if this is in error and to get an early assessment of potential problems. If the full payment is not made within a reasonable period, a firm should contact them again to try to find out why and explain the implications of falling behind with payments.
- Priority should be given to establishing the underlying reason for the missed payments and customers' short and medium-term financial positions.
- Firms should ensure customers' options are not influenced by what is best for the commercial interests of the firm but that the ability of the customer to regain a sustainable repayment position is prioritised.

Record keeping

Lenders must maintain records to demonstrate that all processes as specified in their policy have been applied. Lenders must record why decisions were taken, in addition to what the decision was. In line with GDPR requirements, firms should ensure the complete records they have on a customer are available to the customer upon request. This will include records of customer interactions so that there is evidence that lender and regulatory policy has been followed.

Fees and charges

Lenders should only set fees and charges that reflect the true additional administration costs incurred when an account is in arrears. Lenders should ensure that any additional costs are clear and understandable to customers.

Lenders should advise customers that they run the risk of being charged additional fees if their account falls into arrears and provide prior notice of these charges upon each occurrence.

The UK Finance (formerly CML) Fee Tariff document can be used as a template for setting out transparent policy for a firm's fees and charges.

Use of receivers

UK Finance published a [policy briefing on the role of LPA receivers](#) in March 2018. Lenders considering appointing LPA receivers will probably want to refer to the policy note as it contains information about their use.

Use of receivers – additional case study

Mixed portfolio

The customer stopped paying his mortgage and did not engage with the lender. An LPA receiver was appointed. The receiver discovered that properties were fully occupied but the customer was using rental income to make an improvement to the property which required funding he did not have. Following negotiations and an understanding of the benefits of the improvement and a repayment plan which was adhered to, the portfolio was returned to the customer.

Treatment of vulnerable customers

Lenders should establish and implement clear and effective policies and procedures for the fair and appropriate treatment of customers and their tenants whom the firm understands, or reasonably suspects, to be vulnerable. They may want to take into account that unregulated BTL may be provided to incorporated entities that are not subject to the regulations that CBTL mortgages are, and whose ownership structure may be more varied.

Lenders should develop procedures and policies for dealing with customers who may not have the mental capacity to make financial decisions. The principles outlined in the Money Advice Liaison Group (MALG) Guidelines "[Good Practice Awareness Guidelines for Consumers with Mental Health Problems and Debt](#)" may provide a guide for establishing firm policy.¹

Lenders should seek to apply individual approaches to account for individual customer circumstances.

There is no one-size-fits all approach, especially when a customer is identified as vulnerable. Examples of evidence that lenders may seek and keep on a customer's file, depending on individual customer circumstances can include, but is not limited to:

- the specific circumstances of the customer
- why decisions are made to act in a specific way (for example, an offer of extra forbearance)
- how and what communications are made (for example, lenders may keep a contact log)
- the explicit permission to record the details of the vulnerability from the customer or delegated third party.

When dealing with a vulnerable customer, firms should also consider if their issues could potentially impact on the well-being of the tenants and the quality of the property being rented. It is important to acknowledge the extra dimension of a duty of care to tenants and the fact that the homeowner is not at direct risk of losing their own home. When these factors are considered it is sometimes in the best interest of all parties – the customer, lender and tenant – for action to be taken by the bank more promptly. As such, the approach to vulnerable landlords may be quite different to owner occupiers as extending forbearance or breathing space would normally be in an owner occupier's best interests as they seek to stay in their homes.

Lenders will also have to establish if the rental income is in some way supporting the landlord and if a loss of this income creates greater detriment.

Treatment of vulnerable customers: case studies

Professional lets

The company facilitated an expedited appointment of the receiver of rent due to the diagnosed mental illness of the borrower. With local agent support, tenants were contacted and rents redirected to the lender to meet mortgage payments within seven days of notification of the first non-payment.

There were concerns over the welfare of tenants as well as the maintenance of the properties under security. The

¹ Good practice for helping consumers with mental health conditions and debt awareness guidelines, Money Advice Liaison Group Third edition, 2015, <http://malg.org.uk/wp-content/uploads/2017/03/MALG-Debt-and-Mental-Health-Guidelines-2015.pdf>

portfolio consisted of over 200 properties comprising mainly small self-contained units in converted buildings as well as some terraced housing. The properties were found to be in a poor state of repair, with a lot of missing regulatory requirements such as gas safety certificates. Due to the level of works required some properties were not suitable for letting and needed to be sold.

The geographical concentration of properties meant a staged disposal was needed to achieve best price. The sales resulted in a significant reduction in portfolio balance as properties sold. Properties were often re-let to tenants or rented to new tenants, resulting in a better rental income and stronger mortgage payment levels.

Large portfolio of buy-to-let properties

The customer had managed a large portfolio of BTL properties for around 20 years. Changes in legislation and his increasing age caused the borrower to become very anxious, which resulted in a visit to the lender with a box containing all the keys to the properties. The borrower was interviewed, assessed as vulnerable and his full circumstances considered. The mortgage was not in arrears and had been conducted in an exemplary manner. It became obvious, however, that he would not be able to manage in the future and that he and his wife wanted nothing more to do with the properties. Following legal advice to both the lenders and the borrowers, an LPA receiver was appointed to enable an orderly disposal of the portfolio. The lender was repaid and the borrower has been relieved of the worries that surround the maintenance (financial and physical) of a large BTL portfolio

Varied portfolio

The borrower split from his long-term partner and stopped collecting rent. He fell into a downward spiral, accrued other debts and was assessed as vulnerable. The customer's solicitor guided him towards selling his portfolio as a way of resolving the financial difficulty that he found himself in. The customer remained vulnerable and despite support he resisted moving forward with the sale. The mortgage continued to deteriorate. Eventually a receiver was appointed and the portfolio sold, with the lender repaid and surplus funds returned to the customer.

Treatment of tenants

The position of tenants when the lender is seeking possession

When seeking possession under the mortgage, it is important to note that an order for possession does not necessarily amount to an order for possession against a tenant. Lenders will want to consider whether they want to take possession when there are sitting tenants in their policies.

If the tenancy is in place before the loan was entered into, the lender will normally take possession of the property subject to the terms of the tenancy. Should the lender wish to obtain vacant possession in these circumstances the lender will have to do so in accordance with the legislation governing the relevant tenancy.

If the tenancy was created after the loan was entered into but was consented to by the lender, on possession the lender will take the property subject to the terms of the tenancy. It is a matter for individual lender policies but, generally, the terms and conditions of a BTL loan will include consent to tenancies, although they are unlikely to have checked each individual tenancy agreement. Provided the terms and conditions of a loan are complied with the tenancy will be treated as having consent from the lender.

This means that most tenancies in BTL lending have consent and are binding. Should the lender wish to obtain vacant possession in these circumstances, they will have to do so in accordance with the legislation governing the relevant tenancy.

Unauthorised occupants

In the majority of cases where the loan is a BTL loan and the lender is considering enforcement action against the borrower, the tenant will be subject to a tenancy which has been approved by the lender and the tenant is entitled to occupy the property on the basis of that tenancy.

There are some instances where the borrower has granted a tenancy which does not have lender's consent and is not binding on the lender. In these circumstances the lender's primary duty is to the borrower. When entering into the tenancy, however, the tenant is unlikely to be aware of the borrower's mortgage or the lender's requirements on lettings. Where the lender seeks vacant possession in these cases the lender should consider the tenant's position very carefully and treat the tenant sensitively, respecting the fact that the borrower's actions mean the tenant will lose their home.

In instances where a tenancy is not authorised, or is disputed by the landlord, firms should consider placing even greater emphasis on their responsibility to their customer, the landlord.

Portfolio landlords

Landlords with multiple homes are normally referred to as 'portfolio landlords'. Most firms will assess the needs of their customers on an account basis using the information they have collected directly from the customer to determine the appropriate treatment. It is often difficult to get a holistic picture of a customer's situation when there are several external relationships. However, where it is clear the customer has broader inter-related investments in properties, it might be beneficial to both parties if these factors are considered.

There is not a universal definition of the term portfolio landlords at present. The PRA defines these as borrowers with four or more distinct, mortgaged BTL properties². Lenders draw the line for this definition at varying places. While much of the guidance in this document can be applied to landlords with one or multiple properties, there are additional factors that could be worth considering such as:

- if the landlord's entire portfolio is underperforming or whether just one or a minority of the mortgages are behind
- total assets and liabilities of the business
- if the landlord has multiple streams of lending from different providers
- if the landlord's business is funded by different types of investment
- the existence of consolidation or cross collateral in lending agreements

Portfolio landlords – case Studies

Student portfolio

The portfolio was put into receivership because of the failure of the business. An administrator was appointed over the companies.

On instruction the portfolio included over 100 properties consisting of around 400 beds, most of which were student beds in the North West, as well as a small number of professional units with another 40 or so student beds in the Midlands. The receiver worked with the administrator to retain four staff and the local lettings office so that there was a local property management infrastructure for the properties.

The receiver undertook a substantial tenant contact exercise, reassuring not only student tenants but also their guarantors. The properties had not been well maintained for some time so required significant maintenance. The lender funded repayment of deposits to student tenants to maintain the reputation of the trading name to help with future lettings. The receiver maintained excellent relations with student authorities, who set standards for student lettings.

A small number of property disposals took place of properties in need of substantial works, none of which crystallised a loss for the portfolio. Arrears were cleared with the portfolio balance reducing by 15 percent as capital was paid down with an expected exit point and no loss in 3-5 years.

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