

Conduct Regulation FAQs

If you have specific questions on your policies and procedures please contact your supervisor, as we can only deal in general points.

Update 1 May – **Mortgage Prisoners**

The FCA issued a statement on their website stating that the window for contacting closed book customers has been extended by three months. The FCA considered the challenges that many firms were facing during the current Covid pandemic which made it difficult to deliver on the mortgage prisoner project.

The FCA has extended the window period by 3 months. Details can be found [here](#).

They have also published a letter sent to mortgage lenders and administrators managing closed mortgage books. Details can be found [here](#).

Update 1 May – **Complaints handling**

The FCA published information clarifying how firms should handle complaints during the coronavirus crisis. You can find the information in full [here](#).

Update 29 April – **Meeting update**

This is a summary of the key points from the Conduct Regulation Committee meeting on 29 April 2020.

- UK Finance recently published the latest figures on payments holiday and over 1.6 million holidays were awarded to customers.
- UK Finance published that the industry has extended the existing voluntary arrangement to allow customers on a payment holiday to obtain product transfers. Various firms extended their eligibility criteria to allow for this offering. However, there are some exclusions.
- There were no updates from the FCA concerning the Mortgage Prisoner project, following multiple UK Finance requests to delay the program for 12 weeks.
- It was confirmed that the committee could not agree on an industry agreement on how to treat customers who were approaching the end of a fixed rate due to anti-competitive risks.
- The Arrears and Possessions Committee was working on possible exit strategies for payment holidays and possessions moratorium.
- The Conduct Regulation meetings will now take place once a month and will be an hour in duration.

Update 29 April - **LIBOR**

The Bank of England (BoE), Financial Conduct Authority (FCA) and Risk Free Rate Working Group (RFR) [published](#) a new statement highlighting how firms' LIBOR transition may be impacted by Covid-19. The FCA's parallel statement can be found [here](#).

The FCA statement outlined that it would not be feasible to complete the transition away from LIBOR across all new sterling LIBOR linked loans by the end of Q3 2020. It acknowledged the industry's stance for a smooth and continuous flow of credit to the real economy during the current circumstances.

The statement acknowledged that there will be continued use of LIBOR-referencing loan products into Q4 2020. In light of this, it calls for:

- By the end of Q3 2020 lenders should be in a position to offer non-LIBOR linked products to their customers;
- After the end of Q3 2020 lenders, working with their borrowers, should include clear contractual arrangements in all new and re-financed LIBOR-referencing loan products to facilitate conversion ahead of end-2021, through pre-agreed conversion terms or an agreed process for renegotiation, to SONIA or other alternatives; and
- All new issuance of sterling LIBOR-referencing loan products that expire after the end of 2021 should cease by the end of Q1 2021.

Regulators remain committed to the cessation of LIBOR at the end of 2021 and continue to remind the industry of the risks of lending based on a rate that will disappear in the near-future.

Update 28 April – **Submission dates**

The FCA will allow flexibility in relation to the submission deadlines for some regulatory returns. Please see

<https://www.fca.org.uk/firms/regulatory-reporting/changes-regulatory-reporting-during-covid-19>

Update 27 April – **Complaints**

Information from Information Commissioner's Office on complaints:

- ICO confirmed they are OK with firms prioritising customer DSARs over CMC DSARs, and focusing on loans etc over CMC complaints / DSARs, given FCA guidance to firms.
- ICO encourages firms to be up front with CMCs about this, though, in order to manage expectations and avoid complaints to ICO.
- ICO reiterated that they accept firms may need more time to meet deadlines for responses to queries from ICO. ICO is extending default response times given in letters to firms. Firms should advise ICO if they will struggle to meet these.
- ICO advised that complaints about DSARs are now coming in more from law firms than from CMCs. Law firms have argued that guidance for 'CMCs' is not applicable to them but ICO has been emphasising that much of it is, in fact.
- FCA's bulletin / guidance to CMCs (which is to include DSAR material, according to ICO) was delayed and is still pending.
- CMC / law firm DSAR / complaints trends:
 - WM advised that we didn't have up to the minute numbers but it sounds like volumes are about the same as trend, not down in the last couple of weeks.
 - ICO acknowledged this could well be the case. ICO is interested to see how CMCs react to firms not responding to their DSARs; they emphasised again that clear

communication would help avoid complaints by CMCs to ICO. ICO cannot change the legal deadlines for DSARs.

Update 23 April

The FCA has extended the submission deadlines for some regulatory returns. The extension applies for submissions that are due up to and including 30 June 2020. Full details can be found at: <https://www.fca.org.uk/firms/regulatory-reporting/changes-regulatory-reporting-30-june-2020>

Update 20 April

The FCA set out its expectation of firms when dealing with the need for 'wet-ink' signatures. Details can be found at: <https://www.fca.org.uk/news/statements/expectations-wet-ink-signatures-coronavirus-restrictions>

Update 16 April

We had a short teleconference at which a number of questions were raised, they have been incorporated into these FAQs and a note of the meeting was circulated.

Update 14 April

UK Finance issued figures on the number of mortgage payment holidays that have been granted. Details can be found at: <https://www.ukfinance.org.uk/press/press-releases/one-point-two-million-mortgage-customers-given-payment-holidays-lenders>

Update 9 April

The **Financial Ombudsman Service** has set out its expectations on complaints during the COVID-19 crisis. This can be found at: https://www.financial-ombudsman.org.uk/businesses/complaints-deal/complaints/coronavirus-covid-19-information-businesses?utm_source=newsletter&utm_medium=email&utm_campaign=on151&dm_i=5GFD,6QGL,2WQYXE,PKKP,1

The **FCA** is sending out more frequent updates on its policies. To obtain updates sign up for its newsletters at: <https://www.fca.org.uk/news/news-stories/sign-up-receive-fca-coronavirus-updates>

The **FCA has confirmed its approach to unsecured credit**. The measures include firms being expected to:

- offer a temporary payment freeze on loans and credit cards for up to three months, for consumers negatively impacted by coronavirus
- allow customers who are negatively impacted by coronavirus and who already have an arranged overdraft on their main personal current account, up to £500 charged at zero interest for three months
- make sure that all overdraft customers are no worse off on price when compared to the prices they were charged before the recent overdraft pricing changes came into force
- ensure consumers using any of these temporary payment freeze measures will not have their credit file affected

Details can be found: [here](#)

Update 2 April - **Government schemes to assist individuals**

These are the schemes that are not specifically related to mortgages, but which would benefit mortgage payers *as individuals*:

Jurisdiction	Scheme	Lead Institution	Link
UK	Covid-19 Job Retention Scheme	HMRC and HMT	Description here

UK	Self-employment Income Support Scheme	HMRC and HMT	Description here
UK	Self-assessment deferral	HMRC and HMT	Description here
UK	Bespoke Time to Pay tax deferrals	HMRC and HMT	Description here
UK	Firm-led utility bill deferral	BEIS	Description here
UK	Firm-led telecoms measures	DCMS	Description here

Having done a trawl of the devolved administrations' websites, they are not majorly diverging from the UK-wide measures for individuals. The only real variations seem to be on relief being granted to SMEs, but these aren't relevant to the individual-based measures.

Update 31 March 2020 - **Consultations and Delays to publications and other activity**

The FCA has decided to delay a range of publications due before end June including the Consultation Paper on mortgage switching. More details can be found [here](#).

FAQs

Affordability Assessment

Are closed book customers who are in receipt of a mortgage payment holiday eligible for the revised affordability assessment and therefore need to receive a letter from their administrator?

People who are in receipt of a mortgage payment holiday are not in arrears and so are both eligible for a revised affordability assessment and should be written to by their administrator.

Mortgage Prisoners Modified Affordability Assessment

Scope

Do the new rules apply to closed books if there is still an option to switch to a new product in a different brand from the same lender?

Where the same authorised lender makes available switching options under a different brand name we would not consider the customer to be in a closed book for the purpose of the MCOB 11.9.14R communication requirements. MCOB 11.9.14R(4) applies in the circumstances where the customer is with an active lender but in a book or portfolio where the lender is not carrying out the 'entering into a regulated mortgage contract' activity.

However, the **modified affordability assessment** in MCOB 11.9 is **not** limited to circumstances where the consumer is in a closed book. Therefore, an active lender (trade name A) in the same banking group as a closed book (trade name B) can, if they choose to, undertake a modified affordability assessment of a customer who applies to switch to them from the closed book (trade name B). That said, if the switch is an internal product transfer, other MCOB transitionals may be available (i.e. in MCOB 11.6.3R or MCOB 11.7).

Retirement interest-only mortgages: Does the new affordability assessment apply to customers moving from (a) an interest-only mortgage to a Retirement Interest-Only (RIO) mortgage or (b) from one RIO to a new RIO?

The modified affordability assessment could be used in both these scenarios, as long as the consumer is an eligible consumer (MCOB 11.9.1R) and the new lender has an internal switching policy (MCOB 11.9.12R).

As a RIO would extend beyond the date on which the customer (or, where there are joint borrowers, one of them) expects to retire or, where that date is not known, the date on which the customer will reach the state pension age, the firm must consider whether the customer's income beyond that date would be sufficient to enable them to meet their commitments under the contract (MCOB 11.9.7R(2)(b)).

Eligibility

What is the definition of outstanding fees and charges?

MCOB 11.9.14R(1)(a)(ii) defines outstanding fees and charges as a fee or charge which has become payable under the regulated mortgage contract and remains unpaid beyond the date on which it was due to be paid.

If customers have outstanding fees and charges, are they still eligible and do they need to be notified?

A notifiable consumer (in MCOB 11.9.14R) is defined differently from a consumer who is eligible for the modified affordability assessment (MCOB 11.9.1R). Not everyone who is an eligible consumer

is a notifiable consumer. MCOB 11.9.1R sets out that consumers with outstanding fees or charges that constitute a payment shortfall **will not** be eligible for the modified affordability assessment.

Those with outstanding fees/charges that do not constitute a payment shortfall **will** be eligible (as long as they meet all other conditions).

MCOB 11.9.14R sets out that a **notifiable consumer** must be an eligible consumer (i.e. meet the conditions in MCOB 11.9.1R) and meet the following additional conditions:

- **The customer must not have any outstanding fees or charges** (i.e. fees/charges that become payable under the mortgage contract and remain unpaid beyond the date on which they are due). This includes fee/charges that do not constitute a payment shortfall (MCOB 11.9.14R(1)(a)).
- **The customer must not have a lifetime mortgage** (MCOB 11.9.14R(1)(b)).
- **The customer must be on a reversion rate** (MCOB 11.9.14R(1)(c)). These additional conditions were added to exclude those who are unlikely to benefit from the modified affordability assessment (e.g. those who are not on a reversion rate, have outstanding fees/charges and/or a lifetime mortgage) from being contacted.

Would consumers with unpaid ground rent or insurance be eligible?

On page 20 of the PS 19/27 we state that “consumers who have outstanding fees and charges payable under current mortgage... are not eligible for the modified assessment”. The rules assume that lenders protect themselves under the mortgage contract such that consumers would be liable for any rent or insurance that the lender ends up paying on the consumer’s behalf.

In these circumstances, a lender payment of these is likely to constitute an outstanding fee or charge. The current lender’s treatment of these fees or charges will impact a borrower’s ability to switch. If the outstanding fee or charge means a borrower *is* in payment shortfall, then the borrower would not be eligible for the modified assessment. However, if the current lender does not treat such an outstanding fee or charge as one that would constitute a payment shortfall, then the consumer would be eligible for the modified affordability assessment.

In either case the customer is not a notifiable customer for the purposes of MCOB 11.9.14R (because of the outstanding fees or charges), but firms could choose to include them in similar communications if they wished.

How will lenders be able to check whether customers have outstanding fees and charges?

A firm needs to take reasonable steps to satisfy itself that a customer is eligible. The MCOB 11.9 rules are non-prescriptive over the information sources that lenders use to determine the eligibility of a customer. Receipt of a notification letter in accordance with MCOB 11.9.14R is not intended as evidence of eligibility for the modified assessment of affordability. Potential sources of information might include current account or open banking data, customer-supplied information from their existing lender or administrator, and credit reference agencies but there may well be other means available.

Firms should note that in respect of MCD regulated mortgage contracts customers can ask for an early repayment statement from their existing lender – see MCOB 7A.3.1R.

If the only option is to add fees to the new loan, will this influence the lender as to what products to suggest to the customer?

If the customer does not have the resources to separately pay any fees upfront then the options that any lender (or intermediary) can present will be limited to those without fees or where the fees can be added to the mortgage.

If there is a sub-account where interest is not charged, can this be transferred over on to the new mortgage?

If a consumer's current mortgage has multiple sub-accounts with different interest rates then the sub-account with the lowest interest rate has to be used to assess affordability under MCOB 11.9. In a case where the customer has a subaccount on which interest is not charged they are highly unlikely to be able to find a more affordable mortgage (as per MCOB 11.9.5R(2)(c)).

Communications

Can the notice given to relevant customers under MCOB 11.9.14R refer to the criteria used in identifying recipients, e.g. that they are on a reversion rate?

Firms can choose to include in their notices content other than that required by MCOB 11.9.14R, subject to any communications being fair, clear and not misleading (see MCOB 3A.2.1R). Example notice content has been developed through the Implementation Group, but it is important to note that this material does not constitute FCA rules or guidance.

Debt Consolidation Mortgage Payments

In current circumstances it is difficult for firms to process cheques in order to honour payments like debt consolidation mortgage payments. Is there any leniency regarding the timelines for these now?

UK Finance has asked the FCA for latitude on this earlier in the week (W/C 23/03/20) but they are yet to respond.

Regular returns and annual statement

Is there any adjustment in the rules regarding litigation letters? There may be a difficulty for some firms to adhere to MCOB rules stating that they should not send these letters if there is no intention to litigate. Given the lockdown there will be no immediate ability to do so. In many cases these letters are automated can they still be sent?

See the Mortgage Payment Holiday FAQs - The letters can still be sent if caveated with the fact that there is a delay. The intention of taking litigation post COVID-19 lockdown means these refined letters do not fall foul of MCOB rules.

Mortgage Applications

What do you do with mortgage applications in-flight?

The FCA has advised that where lenders have provided the consumer with a binding offer but the lender is aware that the consumers circumstances may have changed either, the rules do not prevent lenders from not entering into the regulated mortgage contract where they do not think it would be in the consumer's interest:

- MCOB 6A.3.3G (1) (a): states that a binding offer is still subject to conditions including there being no material changes to the facts and circumstances relating to the binding offer which occur after the date the offer is made.
- MCOB 6A.3.3G(2)(b) These material changes include any changes in the borrower's circumstances (e.g. loss of employment) which is likely to have a material impact upon the borrower's ability to afford the loan.

Where lenders are undertaking an affordability assessment MCOB 11.6.14R states that if lenders are (or should reasonably be) aware from information obtained during the application process that the consumer will (or is likely to) experience future changes to their income and expenditure during the term of the mortgage, they must take them into account when doing the assessment.

Product Transfers

How should lenders treat customers who will come to the end of a fixed-term period/eligible for a product transfer during the payment holiday?

Lenders are ensuring that product transfers continue to be offered to customers offered payment holidays so that customers do not revert onto SVRs or reversion rates. Firms may not be able to offer product transfers immediately, while systems issues are worked out, but the intention is to continue offers for up to date customers. Further information can be found [here](#).

For customers in arrears, product transfers will not be able to be offered, as per usual rules.

BAU

Should lenders allow further advances and ports to proceed during the payment holiday?

The lender should consider the individual circumstances of the case, including:

- If the customers have received a binding offer (see answer to question on in-flight applications above), the rules do not prevent the lender from not entering into the contract.
- If this is new lending, the lender would have to conduct an I&E and consider if they are able to source a valuation.

Annual statements

Due to operational capacity issues some firms maybe struggling to deliver on their annual statement obligations. Is there any leniency on the issuance of annual statements during the lockdown period? What is the correct interpretation of annual? Is it during a 12 month period or calendar year?

MCOB 7.5.1 states *a firm must provide the customer with a statement at least once a year (or, in relation to the first statement, within the first 13 months).*

This suggests that the firms must provide the statement on the anniversary of the first statement.

Base rate changes in quick succession

Do firms have to issue a letter for each move in the base rate if two or more happen in quick succession?

MCOB 7.6.1(R) says a firm must give reasonable notice of any changes to the payments that the customer is required to make resulting from interest rate changes.

Using the base rate moves on the 11th and 19th March as an example, because they both occurred in the same month and the change to the customer would be singular, occurring from the 1st April, most firms seemed to agree that only one letter was needed.

ICO Requirements

Are the ICO looking at relaxing timescales on access requests? Firms may experience delays responding to these.

ICO website has indicated some work is being done to accommodate this. The complaints working group have picked up this issue with the ICO.

Withdrawing Offers

What is the effect of delayed move on a binding offer? Can a binding offer be rescinded?

The FCA rules allow for firms to back out of a binding offer if there is a material change to facts and circumstances. An example would be if the customer has lost their job.

Where lenders have provided the consumer with a binding offer but the lender is aware that the consumer's circumstances may have changed, FCA rules do not prevent lenders from not entering into the regulated mortgage contract where they do not think it would be in the consumer's interest:

- MCOB 6A.3.3G (1) (a): states that a binding offer is still subject to conditions including there being no material changes to the facts and circumstances relating to the binding offer which occur after the date the offer is made.
- MCOB 6A.3.3G(2)(b) These material changes include any changes in the borrower's circumstances (e.g. loss of employment) which is likely to have a material impact upon the borrower's ability to afford the loan.

Where lenders are undertaking an affordability assessment MCOB 11.6.14R states that if lenders are (or should reasonably be) aware from information obtained during the application process that the consumer will (or is likely to) experience future changes to their income and expenditure during the term of the mortgage, they must take them into account when doing the assessment.

The material changes referred to in (1)(a) include a material change in the borrower's circumstances (such as loss of employment after the borrower's application) which is likely to have a material impact upon the borrower's ability to afford the loan.

In most cases this would depend on the customer notifying the firm.

Can a firm reach out for additional information if they suspect a change in circumstances? For example, if a firm knows that a customer works in a sector that has been badly impacted by the crisis in order to ensure their income level hasn't changed to make the debt unaffordable.

Yes, firms can reach out to their customers to verify. However, high volumes may make this difficult for some firms. There is no obligation for firms to check if the customer is up to date with payments.

Assessing Vulnerability

Are the firms required to assume vulnerability when a payment holiday is requested? How is vulnerability assessed during this time?

Requesting the payment holiday not automatically seen as a marker of vulnerability. In discussions with customers regarding the holiday, vulnerability may be discovered, however.

It is also possible that the vulnerability may emerge at the end of the holiday when payment is intended to be resumed. The approach to the COVID-19 crisis has been and will remain fluid and accommodative especially for the vulnerable customers.

Extension of mortgage offers

Will it be necessary to resend all mortgage documentation if the offer is extended? Or will it be satisfactory to simply send a single notification letter?

It will be acceptable just to send a letter.

When does the 3-month offer extension commence for cases where an exchange has been evidenced?

It commences from the moment that the borrower/solicitor requests for it. This is targeted at customers who are due to be purchasing during the 12 week lockdown period and have had their offer extended to enable the purchase to take place at a later date.

Furloughed Customers

How should firms treat furloughed customers that ask for a standard internal product transfer which does not require additional borrowing?

Lenders are able to offer a new mortgage offer to furloughed customers, or those on a payment holiday without undertaking a full income and expenditure assessment at that stage.

How should firms treat new businesses where a customer is furloughed?

This question has been referred to the FCA. UKF's interpretation of the handbook is that lenders should assess affordability based on the actual income of the customer. They cannot rely on the consumer saying that they will return to a higher wage at a later date. Similarly, firms will have to consider the actual bonuses and overtime that the customer has in accordance with the firms lending criteria.