AMI Q&A: COVID-19

We will update this Q&A on a regular basis. If you have any questions you would like answered, please email the AMI team on info@a-m-i.org.uk

Firms

Updated** - **What is the guidance on employees working from the office?

On 22 September 2020 government announced that where an employer, in consultation with their employee, judges an employee can carry out their normal duties from home they should do so. However, firms should consider circumstances such as the mental health and wellbeing of an employee and/or safety and security risks e.g. customer confidentiality in their discussions with staff.

The government has produced guidance to help ensure the work places of those who cannot work from home are as safe as possible. Extra consideration should be given to those people at higher risk. To view the recent updates to the guidance, please click here.

Government has provided advice on the use of face masks in other indoor settings, which can be found here.

The FCA's guidance remains, which states that they would not expect financial advisers to go into work or meet face-to-face. It is down to a firm's designated senior manager (or equivalent) to identify which employees are unable to perform their jobs from home and may need to travel to the office or business continuity site. However, this will be a limited number of people and firms must take every possible step to facilitate working from home.

It's important that people work safely. Employers have a legal responsibility to protect workers and others from risk to their health and safety which means thinking about the risks they face and doing everything reasonably practicable to minimise them. Additional guidance is available from the Health and Safety Executive.

Firms should undertake a risk assessment and firms with five or more employees should record their significant findings, including: the hazards; who might be harmed and how; and what they are doing to control the risks. Government expects all employers with over 50 employees to document their findings on their websites.

Firms should record the decisions they have made, the rationale and how communicated.

I have read that there have been changes to the furlough scheme, what are they?

The scheme is now closed to new entrants, however, employees on maternity and paternity leave who return to work will still be eligible for furlough.

Click here for more details on the scheme.

How can my firm apply for the Jobs Retention Bonus (JRB)?

On 8 July Government announced that it will introduce a Jobs Retention Bonus for employers who bring back furloughed workers and continuously employ them to 31 January 2021. This will be a one-off payment of £1,000 per employee. Employers will be able to claim the JRB from February 2021 and guidance will be published by the end of September 2020.

More information can be found here.

How do I find out what help is available to my firm?

The government has introduced a business support finder tool to help employers and the self-employed see what support is available for them and their businesses.

There is also a free business support helpline and a webchat facility.

How do I check if I am eligible for Government's self-employment income support scheme (SEISS)?

Information on the second SEISS grant can be found here, however HMRC will contact eligible individuals. Applications for the second grant need to be made on or before 19 October 2020.

We're aware that some changes have been made to the Coronavirus Business Interruption Loan Scheme (CBILS), but will this benefit my business?

On 30 July it was announced that the European Commission had relaxed its State Aid rules and small and micro businesses (fewer than 50 employees and turnover less than £9 million) are exempt from elements of the 'undertaking in difficulty' test. This means they may now be eligible for the CBILS.

For more information on the CBILS please click here.

Firms may wish to consider seeking assistance to collate their application by using an NACFB or FIBA registered broker. They will have experience on how to frame and application and the documentation required.

Risks arising from loans

Government are currently taking legislation through Parliament to amend the law on Corporate Insolvency and Governance. This permits directors to continue to trade during the crisis, whilst they are aware that the firm is insolvent, and not be subject to sanction. There are exemptions to this for many financial services firms so their Directors are still liable. Our current view is that intermediary firms will sit inside these exemptions, but we will communicate further on this in due course. Accordingly the advice below continues to apply, but may change.

Potential wrongful trading might arise where a director knew, or ought to have concluded, that there was no reasonable prospect that the company would avoid going into insolvent liquidation and failed to take every possible step to minimise the potential loss to the company's creditors. It is important

to note that directors may be liable for wrongful trading even though their business is not actually trading, but losses are increasing.

On 28 March 2020, the UK government announced changes to the insolvency regime. This was in particular the temporary suspension of wrongful trading provisions for directors to remove the threat of personal liability during the pandemic, with retrospective effect from 1 March 2020, currently lasting for three months, although this may be extended.

When a company is financially distressed and formal insolvency proceedings become more likely, the directors' duty to promote the company's success (i.e. to act in the interests of the members as a whole) is replaced by a duty to act in the interests of the company's creditors as a whole (i.e. to preserve the value in the company in order to maximise the return to creditors).

Because of recent events, the prospects of avoiding insolvent liquidation have increased. The amendment to the Insolvency Act appears therefore to remove a director's potential personal liability for losses in circumstances when, from 1 March 2020, they knew or ought to have known that the company should enter into a formal insolvency process. As a result, this should allow directors of companies that have been directly affected by the economic effects of the Coronavirus pandemic to continue trading.

However, a blanket suspension of wrongful trading could risk abuse and may cause directors to bury their heads in the sand if they feel they are protected by the temporary suspension. The provisions are there for a reason: to protect creditors. It should be noted that directors were always protected if they acted reasonably.

Indeed, the temporary suspension of wrongful trading should not be interpreted as a suspension of fiduciary duties. Directors will need to remember that they act in the best interest of the company's creditors if they are trading while insolvent and the duty to cease trading remains a fiduciary duty.

As with wrongful trading, preference payments may become a bigger risk to directors in the current climate. Indeed, the desire to pay connected creditors ahead of others may be incredibly strong as directors face uncertainty and potential insolvency in these difficult times. With the new government measures, HMRC has effectively deferred the collection of their debts to ease company cash flow but that does not mean they will not become due.

How do Bounce Back Loans (BBL) differ to Coronavirus Business Interruption Loans (CBILS) and how can I find out more information/apply?

Small businesses (including sole traders) affected by Covid-19 can apply for a BBL and can borrow between £2,000 and £50,000 (subject to a cap of 25% of the turnover of the business). The scheme provides the lender with 100% Government backed guarantee, which should speed up decision making and payment of the loan.

Government pays the interest and fees for the first 12 months and then a flat rate of interest (2.5%) applies after the interest free period. Loan terms will be up to six years.

The application process is designed to be simple and firms can click here to view eligibility criteria. The British Business Bank website lists accredited lenders, explains the application process and includes FAQs. Firms should approach their usual bank (if accredited) in the first instance.

Small firms may consider applying for a BBL to manage cashflow during this period. The loan can be used essentially as a bridging facility and is one of the cheapest forms of borrowing available. Firms must bear in mind that this is a debt and the borrower will remain fully liable for the repayment. This

has the potential to impact the firm's capital position, so firms will have to factor in this in prior to making any application.

Any business that has already taken out a Coronavirus Business Interruption Loan of £50,000 or less can apply to have these switched over to the BBL scheme.

How can I support our employee's wellbeing when working from home and living by themselves?

The shift to permanently working from home due to Covid-19 is difficult for many but especially those who live by themselves may need extra support. Employers and colleagues should be mindful of this and may wish to read and share the advice given on the NHS 'Every Mind Matters' website.

How can I/my firm stay safe when using video conferencing and working from home?

The Information Commissioner's Office (ICO) has created a blog on what to look out for when using video conferencing technology. The National Cyber Security Centre (NCSC) has also published guidance on this topic.

The ICO has also issued guidance on how to remain compliant with data protection laws whilst working from home.

As some members of our staff are returning to the office, what are the rules about collecting data on their health to keep everyone safe?

The Information Commissioner's Office has published guidance on this. Data protection does not stop you asking employees whether they are experiencing any COVID-19 symptoms or introducing appropriate testing as long as the principles of the law – transparency, fairness and proportionality – are applied.

There are six key data protection steps:

- only collect and use what's necessary;
- keep it to a minimum;
- be clear, open and honest with staff about their data;
- treat people fairly;
- keep people's information secure; and
- staff must be able to exercise their information rights.

Lenders

I wondered if you are able to check to see if lenders would still be willing to offer rate switches to client's whilst taking a COVID-19 related payment holiday?

At the end of April, UK Finance announced an industry agreement that mortgage holders who are on payment holidays due to Covid-19 or who have been furloughed will be eligible for a product transfer at the end of their initial term.

It is important that consumers do not cancel their direct debits as this may have an impact on their credit history; the lender will ensure that they process the payment request and action at the first possible payment date.

With lenders resources massively depleted are they still dealing with complaints?

Lenders are still dealing with some complaints and have been finding ways to triage these to ensure that vulnerable people are dealt with as a priority.

Many lenders are now changing their mortgage lending criteria to require lending submissions for purchase, remortgage to identify if the consumer has been "furloughed". In that event the lender is ignoring their previous income and only taking 80% of the £2500 per month support as income. Is this allowed? What is the FCA's view?

AMI wrote to the FCA to highlight this and to understand the FCA's view. The FCA responded as follows:

We recognise that being furloughed will put many consumers in a more difficult position. In light of the broader economic impacts of the crisis, we also have to recognise that unfortunately lenders cannot be certain that the previous full salary will re-materialise. This also applies where employers top up furlough payments. Lending is a commercial matter for firms, and as such they are entitled to consider the applicant's current income when they assess risk.

It is also important to us, from a conduct perspective, that when consumers take out new borrowing they are adequately protected from the risk of the loan being unaffordable. This is, of course, more relevant where the consumer switches externally. If consumers cannot remortgage to another lender they should still be able to switch internally, where the lender already knows the risk.

How lenders obtain the information they need to assess affordability is a matter that our rules do not address. Where an intermediary is utilised, the extent of such checks and any additional costs remain a commercial matter between lenders and brokers.

***Updated -** **Will mortgage payment holidays be extended?**

On 14 September 2020 the FCA published guidance, which supplements the June guidance and came into effect on 16 September 2020. This guidance sets out the expectations of how firms should support customers affected by coronavirus after 31 October 2020, including customers that have already received payment deferrals but remain in financial difficulty and those newly affected by coronavirus once the June guidance expires.

Firms can provide tailored support through short and long-term forbearance options. Examples of short-term forbearance include a further payment deferral or interest waiver, whereas longer-term options may include extending the term of the mortgage contract, changing its type (e.g. interest only/part and part/ changing the rate) or deferring the payments.

Short-term support can be offered without having to demonstrate that this is appropriate for the customer's individual circumstances, however this must be reviewed within 60 days. The FCA states that this approach will not be suitable for certain types of customer, such as those in arrears and those with a short remaining term.

The guidance confirms lenders, including second-charge lenders, can capitalise on an opt-out basis for customers able to resume payments (including those assumed to be in this position because of non-response). This extends to those whose payment deferrals end after the June guidance expires on 31 October.

Normal credit reference agency (CRA) reporting will resume at the end of payment deferral periods taken under the June guidance and any further forms of support will be reported to credit files in the usual manner. For customers that can restart payments, it is in their best interests to do so.

Firms should understand, recognise and respond to vulnerable customers' needs. The guidance builds on the Principles for Business and Approach to Consumers.

The FCA has stated that it would not expect repossessions to take effect in cases where: the payment shortfall was as a result of a payment deferral; a local or national lockdown was in effect; or someone was shielding or self-isolating due to coronavirus.

The FCA's consumer guidance on dealing with financial difficulties during coronavirus can be found here.

***Updated* - I read that a payment holiday will not show as a missed payment on my client's credit file but are there other implications?**

Any payment deferral taken under the June guidance will not be reflected on a client's credit file.

However, where a customer takes a further payment deferral after expiry of the June guidance or is granted a payment deferral for the first time after 31 October 2020, then normal Credit Reference Agency reporting will resume. Firms should therefore be clear with customers about the implications of taking a payment deferral under this new guidance.

It is important that advisers check credit files where customers have deferred payment on their mortgage, loans or other credit. Customers should only be using payment deferrals if they are experiencing financial difficulty due to coronavirus and when in genuine need.

***Updated* - Can my client take out a payment holiday for their Buy to Let property?**

The mortgage guidance announced on 14 September 2020 continues to apply to landlords whose tenants are experiencing financial difficulties due to coronavirus. A payment deferral taken after the expiry of the June guidance will, however, be reflected on the customer's credit file. Buy to let mortgage customers need to carefully consider whether a payment deferral is in their best interest and understand the implications. If they can resume full payments, then they should do so.

In view of current circumstances, are lenders allowed to withdraw an offer once it has been made?

Unless there is a material change in the customer's circumstances then the withdrawal of an offer would be in breach of the Mortgage Credit Directive. The lender would need evidence of this. If the customer circumstances remain the same, the lender has no right to withdraw. The exception to this would be if the lender had no funding which therefore necessitated the withdrawal of all its mortgage offers.

What is being done to assist non-bank (specialist) lenders?

Non-bank lenders do not have access to the Term Funding Scheme, unlike bank lenders. This resulted in a halt to new and pipeline business in this sector and difficulty funding loans where forbearance has been granted. However, some non-bank lenders have completed securitisation transactions which has provided access to more funding and allowed them to re-launch product ranges.

Protection

Will protection insurers allow customers a payment deferral?

On 11 August 2020, the FCA issued updated finalised guidance which states that the rules and guidance will be extended for a further three months until 31 October 2020.

The update states that the guidance on payment deferrals is aimed at enabling customers who have not yet requested a payment deferral to be able to do so. This can be done at any point during the period up to 31 October 2020 (this means that a deferral could go beyond that date).

The FCA has also amended the guidance to make it clear that where a customer is unable to resume payments at the end of a deferral period, in line with treating customers fairly, it expects firms to act in customers' interests. If a customer is still in financial difficulties at the end of a payment deferral then they are entitled to forbearance under the FCA's forbearance rules.

Intermediaries should continue to encourage customers to speak to them if they are having payment difficulties and discuss the options available, as a payment deferral may not always be in the customer's best interests.

We are concerned that if customers cancel their protection policies there will be commission clawback which will impact cashflow - what can be done about this?

AMI is aware that this could be an issue and has considered how as a trade association we can assist intermediaries in this area. Subsequently, we have raised this as an area of concern to the FCA.

In addition, in our response to the FCA's draft guidance on customers in financial difficulty due to coronavirus we highlighted the need for insurers to defer commission clawback during this time. We have also stated in this response that there should be no insurer commission clawback if the customer/insurer temporarily amends cover due to Covid-19 related reasons i.e. if the risk profile of the consumer is reassessed or the customer takes a payment deferral.

Some insurers have stated that there will be no impact to an intermediary's commission during a payment deferral. However, AMI has called for more transparency from other insurers.

FCA and other regulatory requirements

What is the FCA stance on bailout loans and capital adequacy?

The FCA has published a statement on financial resilience for solo-regulated firms, which was updated on 17 April 2020. Capital and liquidity buffers are there to be used in times of stress. Firms who have been set buffers can use them to support the continuation of the firm's activities.

In its Dear CEO letter on 31 March, the FCA stated that:

Government schemes to help firms through this period can be used to help firms plan for how they will meet debts as they fall due and help firms remain solvent in the immediate period;

Government loans cannot, however, be used to meet capital adequacy requirements as they do not meet the definition of capital.

On 11 June the FCA issued finalised guidance on assessing adequate financial resources. This guidance does not place specific additional requirements on firms because of Covid-19, but the crisis underlines the need for all firms to have adequate resources in place. This guidance applies to all mortgage intermediary and protection advice firms, irrespective of size or turnover and is as relevant to networks as it is to DA firms. AMI has issued a newsflash on this guidance, which can be found here.

The FCA's statement on expectations of firms using AR arrangements re-iterates that regulated firms that use ARs to carry out regulated activities remain responsible for their ARs and networks meeting the FCA's rules.

Principals should continue to ensure that:

- the controllers, directors, partners, proprietors and managers of an AR are fit and proper
- the AR is solvent and suitable to act for the firm
- the principal has adequate controls over the AR's activities
- the appointment does not prevent the firm from satisfying and continuing to satisfy the threshold conditions
- the principal is able to monitor and enforce compliance with relevant requirements.

Has the FCA clarified whether Business Interruption Loans and other temporary debt taken to deal with Covid-19 turnover deferrals can be exempted from the capital requirement calculations?

AMI raised this question with the FCA and has received the following response:

If your question refers to the calculation of balance sheet solvency for accounting purposes as a result of taking on Business Interruption (BI) loans or other debt, it is not possible for us to provide a general response to this question. BI loans should only be provided to viable firms as set out in the relevant lending criteria. Given the situation will be firm specific, it is important that the firm engage with its supervisor as soon as possible to discuss next steps if it has solvency concerns.

Will the FCA cancel or postpone the payment of FCA fees for firms?

The FCA has published its policy statement and made rules for regulated fees and levies 2020/21. Minimum fees have been frozen and the FCA has extended payment terms for small and medium firms (firms with a total fees invoice of less than £10,000) by two months to 90 days. Large firms are expected to pay their fees and levies under the usual payment terms.

Whilst the FCA fees remain broadly level for mortgage intermediaries, firms whose turnover has remained consistent will see a reduction in total cost of regulated fees year on year, due, in the main, to a reduction in the levies paid to the Financial Services Compensation Scheme. By our calculations, smaller firms will see a real fall of about 6% in total invoiced costs, year on year, with larger firms seeing a 10% fall based on the same turnover.

Firms have the option of using Premium Credit, or another credit provider, as a facility that spreads the payment of the FCA fees over 10 months. There is a credit rating test associated with this. AMI members benefit from a reduced transaction fee with Premium Credit.

How do I deal with Senior Management Function (SMF) issues during Covid-19?

The FCA has set out its expectations to help solo-regulated firms apply the SM&CR. This can be found here.

Can a firm allocate an absent Senior Manager's prescribed responsibilities to an individual covering the role and how long for?

On 6 May 2020, the FCA confirmed that they have extended the maximum period firms can arrange cover for a Senior Manager without being approved, from 12 weeks to 36 weeks, in a consecutive 12-month period.

Firms can use the modification by consent if, for example, a Senior Manager is absent because of coronavirus, or recruitment to replace a Senior Manager is delayed due to the coronavirus pandemic.

Firms can apply for the modification by consent as a precautionary measure, in advance of actually needing it. The modification by consent will take effect from the date the firm applies for it and will end on 30 April 2021.

For more information and how to apply for the modification by consent, please click here.

The FCA has also issued a statement on the expectations of firms using AR arrangements, which includes information on the temporary arrangements of controlled functions, furloughing of approved persons, how arrangements should be documented and responsibilities of the Principal firm. Please click here for more information.

Firms must ensure that if they furlough their compliance and risk functions, they still maintain appropriate systems and controls; and second line oversight where appropriate. This is equally important for networks and large firms.

Have the rules on client identity verification been relaxed due to social distancing and restrictions on non-essential travel?

There is an obligation under the Money Laundering Regulations (MLRs) for firms to verify a customer's identity and firms are still expected to comply with this. As noted in the FCA's Dear CEO letter, the MLRs and the Joint Money Laundering Steering Group guidance already provide for client identity verification to be carried out remotely and give indications of appropriate safeguards and additional checks which firms can use to assist with verification.

The FCA's page highlights their high-level expectations on the application of financial crime systems and controls during coronavirus. It also includes a section on operational challenges and flexibility within existing requirements on client identify verification.

Can the rules surrounding vulnerable customers be relaxed given the current situation?

Firms still have a duty to treat customers fairly and now more than ever should be aware that all customers are potentially vulnerable.

On 29 July, the FCA published updated draft guidance for vulnerable customers. This is subject to a further consultation due to changes that have been made to the original proposals. AMI will respond to this consultation, which closes on 30 September 2020.

As part of this work, the FCA has also published a 2020 Financial Lives report on the experiences of vulnerable consumers and case studies.

This question around the relaxation of vulnerability rules has commonly been asked in relation to equity release where a face-to-face meeting is a key component of the Equity Release Council's standards and is in place to protect consumers. However, given Government's guidance on social distancing, the Equity Release Council has temporarily revised their rules to enable equity release cases to complete without a physical face-to-face meeting with a solicitor. This is a short-term amendment to the rules and will only apply during Government's requirement to "Stay at Home". Once this has been lifted, there will be a further update from the Equity Release Council. For more information, please click here.

***Updated* - My PI insurance cover is due for renewal and I have only had one quote which is a substantial increase on last year. Is anything being done?**

We are aware that PI insurers currently have lower appetite for risk and have increased both premiums and policy excess substantially. We are also aware of the application of certain exclusions.

In April the FCA stated that it is monitoring the situation, that PII cover remains available in the market and that the crisis is not preventing insurers from undertaking the renewals process. Firms need to have PII policies in place in accordance with FCA rules to support their ability to meet liabilities as they fall due and to protect their consumers. It is ultimately a commercial decision for insurers about what cover they will offer including cost and on what terms. But they need to meet their regulatory obligations, including when manufacturing, distributing and writing a contract of insurance.

We collated data from member firms and presented this (anonymised) to the FCA to illustrate the extent of the problem. We will be involved in further discussions with the regulator on this topic.

In addition, we will shortly write to member firms to obtain additional information as the FCA has indicated that supplementary data would be useful.

The FCA's September edition of 'regulation round-up' included a section on PII and reminded firms of the need to meet its rules and highlight some of the relevant requirements:

- GI and mortgage intermediaries' PII must meet the minimum requirements in MIPRU 3.2.
- Providers should consider whether exclusions are consistent with their product governance obligations including, under PROD 4.2, whether the product is compatible with the needs, characteristics and objectives of the target market
- Firms distributing PII will need to meet ICOBS requirements. This includes the need to consider whether an exclusion is consistent with the needs of their customer under ICOBS 5.2.

If firms have recently had an exclusion applied at renewal by their PI insurer, it may be worth discussing this with your insurance broker following the FCA's reminder to insurers on their obligations under PROD 4.2.

The FCA has stated that it will continue to monitor the impact that coronavirus has on all firms' operational resilience, including insurers. Where it sees evidence that insurers' ability to process renewals is being affected, it will consider taking action in line with our approach to supervision.

Where an individual firm has concerns it will be unable to secure appropriate PII cover, including at the point of renewal, it should notify the FCA in the usual way.

We have created a 'how to get PII ready' guide for members, this can be found here. A PII draft presentation for firms can also be found on our website.

***Updated* - Will the Directory deadline be delayed? We're worried that we won't have time to get all our staff certified by 9th December if this crisis continues into September?**

On the 30 June the FCA announced that the deadline for solo-regulated firms to have undertaken the first assessment of the fitness and propriety of their Certified Persons has been delayed from 9 December 2020 until 31 March 2021.

The FCA issued a consultation on extending the deadline for: the date the Conduct Rules come into force; the deadline for submission of information about Directory Persons to the Register; and references in its rules to the deadline for assessing Certified Persons as fit and proper (which has already been agreed by the Treasury). AMI responded to the consultation and the FCA has stated that the policy statement will be issued in October 2020.

AMI also issued a newsflash which can be found here.

If firms can continue with their programmes of work in these areas and are able to certify staff earlier than March 20201, then they should do so. Firms will need to consider whether they have been significantly affected by the coronavirus pandemic and AMI would encourage firms, where possible, to continue to work towards the 9 December 2020 deadline.

It is also important that firms dedicate sufficient time and resources to ensure that Conduct Rules training is effective.

On 14 August, the FCA updated its SMCR webpage for solo-regulated firms to include tables on positive and negative indicators with regards to fitness and propriety and conduct rules. To view the page please click here.

The FCA has confirmed that it will publish details of certified employees on the Financial Services Register from 9 December 2020 and has re-iterated the point that 'where firms are able to provide this information before March 2021, we encourage them to do so'. However, as we have not yet seen a working version of this system, it may be sensible to delay the submission of this data until later in the year.

The FCA has updated its user guide on the bulk upload of Directory persons data, as from 7 September 2020 it changed the way firms receive feedback about their Bulk Add Directory Submissions. This document can be found here. We recommend that firms await further guidance from AMI before submitting data.

AMI will continue to monitor regulatory developments in this area.

Has the FCA relaxed rules on complaint handling during the crisis?

On 31 July the FCA updated its guidance on how firms should handle complaints during coronavirus. This update states that firms should comply with complaint handling requirements and a failure to comply should only arise in exceptional circumstances connected to the impact of coronavirus. If a firm is facing difficulties complying, it should contact its FCA supervisor or firm.queries@fca.org.uk.

If our firm receives a DSAR (Data Subject Access Request) how can this be fulfilled if staff cannot go into the office to review and print off documentation?

ICO guidance (updated 13 July) relating to its regulatory approach during the pandemic states: *We will recognise that the reduction in organisations' resources could impact their ability to respond to Subject Access Requests, where they need to prioritise other work due to the current crisis. We can take this into account when considering whether to impose any formal enforcement action*

In the event that firms cannot access data or information, they should explain this to the parties subject to a DSAR or complaint, provide a timeframe for delivery and ask for their understanding in the interim.

Firms also need to consider the FCA's updated statement (updated 31 July) on complaint handling in the current crisis.

What will happen to the FCA's mortgage prisoners work? Will it continue?

The mortgage prisoners work is a high priority for the FCA and it will continue.

FCA has written to mortgage lenders with closed books and third-party administrators setting out expectations that they should review the interest rates they are charging to consider whether they are consistent with the obligation to treat customers fairly in the light of the exceptional circumstances arising out of coronavirus.

It issued a new statement and has extended the deadline by which trapped borrowers must be contacted and informed of the FCA's changes to responsible lending rules. All third-party administrators should have finalised their contract strategies by 1 May 2020. The deadline by which the letters must be sent has been extended until the end-November 2020 and FCA has advised lenders that they should have products available to help these borrowers by end-July.

We will keep you appraised of any updates.

***Updated* - Will the FCA delay the rule change to MCOB 4.7A.23A (the cheapest rule) which requires a firm to explain to a customer why it is advising them to enter into a particular regulated mortgage contract when there is a cheaper product that would also be appropriate. This change is currently due to take effect on the 31st July.**

The FCA did not delay the implementation and firms are reminded that the cheapest rule is now effective and applies to all firms.

The 'cheapest rule' applies where there is more than one product available to the customer that suits their needs. If the cheapest of these products is not recommended, the firm must ensure that the reasons for this have been explained to the customer and a record of this must be maintained on file.

The FCA has provided information on the calculation of the 'cheapest' product. AMI advises firms to look at updates from their sourcing system to ascertain how they are meeting this rule.

All firms should ensure that compliance to this rule is documented within their sales process.

Following discussions with the FCA's mortgage policy team and member firms, AMI has produced a factsheet to provide additional clarity on the requirements and considerations.

Some mortgage advice firms, particularly those with large overheads and expensive premises, may not survive this crisis. There may be lots of qualified mortgage advisers looking for new jobs or setting up as DA when we come out of this. Has the FCA given any thought to expediting their authorisations process if needed?

We are aware that some cases are currently waiting for four months to be assigned a case officer.

We raised this as part of our queries to the FCA and received the following response:

There are number of scenarios which are worth considering. If an adviser, who is solely a mortgage adviser, is moving from one principal firm to another as an appointed representative (AR), the process to register them with a new principal firm is a notification process which typically takes less than two weeks. However, if the individual moving is also applying for a controlled function - for instance because they also undertake designated investment business or a governing function - then there will be an assessment process for the individual. If nothing has changed since the individual was last assessed for a controlled function, applications are typically assessed within a few weeks.

If, however, there is any adverse information the case becomes 'non-routine' and the process can take significantly longer.

If the adviser wanted to set up a new directly authorised firm (as opposed to being an AR) we typically assess such cases within a month unless something, such as adverse intelligence, makes the case non-routine.

We have a large number of non-routine cases, and are anticipating others as a result of Covid-19 (e.g. caused by the failure of other types of firms). While we are not in a position generally to prioritise one category of application over another, we may take into account any special circumstances on a case by case basis.

Will the FCA consider allowing a delay for firms to submit their Gabriel returns?

The FCA has announced that the late fee for submissions by small and medium sized firms (paying less than £10,000 in fees and levies in 2021/21), will not be applied in the period up to and including 30 September 2020.

Please note that firms will still be expected to submit their return as soon as possible and will be sent a reminder letter if they miss their deadline. Firms are reminded that the flexibility is intended to cover the situation where the impacts of coronavirus have made it impractical to submit returns on time.

The FCA has also stated that, subject to any significant change in the coronavirus pandemic situation, it has no intention of continuing to offer reporting deadline flexibility after 30 September.

What considerations should be made if a firm decides to wind down?

The FCA has stated that:

If a firm needs to exit the market, planning should consider how this can be done in an orderly way while taking steps to reduce the harm to consumers and the markets.

Firms should maintain an up-to-date wind-down plan that takes consideration of the current market impact of the coronavirus (Covid-19) crisis.

The FCA's recent guidance on maintaining assessing adequate financial resources is also relevant and includes a section on wind-down planning. The finalised guidance can be found here.

Government schemes to help firms through this period can be part of a firm's plans for how they will meet debts as they fall due.

If a firm is concerned it will not be able to meet its capital requirements, its debts as they fall due, or if its wind-down plan has identified material execution risks, it should contact the FCA or its named FCA supervisor, with its plan for the immediate period ahead.

AMI has also issued guidance to members 'things to consider if you are downsizing or closing a firm', which can be found here.

I saw that there is a fake FCA email in circulation, where can I find out more information to help spot and avoid these scams?

The FCA has a dedicated webpage with information on fake FCA emails, websites, letters and phone calls.

Updated** - **We have received a survey e-mail from the FCA, is this genuine?

Having carried out a Covid-19 impact survey on 13,000 solo-regulated firms in June, the FCA surveyed the remaining 10,000 firms in August.

The FCA has also issued an additional 'Covid-19 impact survey' to the first tranche of firms i.e. those firms that received the initial survey in June. The relevant firms should have received this on 16, 17, 18 or 22 September 2020 and completion is compulsory.

We expect that those firms who received the initial survey in August will also be asked by the FCA to complete another in due course.

If firms have any questions please contact AMI by mailing info@a-m-i.org.uk or call the FCA Supervision Hub on **0300 500 0597 in the first instance, or via email at** firm.queries@fca.org.uk.

If a firm is challenged on the content of their return or their failure to complete a return, then we recommend they make contact with AMI's Chief Executive for confidential support.

Are staff expected to continue with any CPD (Continuing Professional Development) requirements during furlough or whilst working at home? Can any requirements be carried over to the next CPD year?

There is currently no FCA specified minimum requirement of CPD hours for mortgage advisers, however there is a minimum of 15 hours for insurance advisers and 35 for IFAs (retail investment advisers). Most firms will have their own requirements as part of their T&C schemes.

The FCA has issued a statement to confirm that they expect most individuals will be able to continue completing CPD whilst on furlough or working from home. Firms should continue providing CPD material to employees, including furloughed staff.

However, the FCA recognises that there could be exceptional circumstances which prevent an individual completing the required minimum CPD hours. Due to the current situation the FCA is allowing firms to let individuals carry over any uncompleted CPD hours to the next CPD year. This should be reviewed on an individual case by case basis as in their statement the FCA is clear on what circumstances are classed as 'exceptional'.

Other

Will the Help to Buy scheme be extended?

The government has extended the deadline for practical completion under the Help to Buy scheme from 31 December 2019 to 28 February 2021. The deadline for legal completion remains at 31 March 2021. For those customers that had a reservation in place before 30 June and have experienced severe delays due to coronavirus, Homes England will look to extend the legal completion until 31 May 2021, on a case by case basis.

More information can be found here. The Homes England customer FAQ has also been updated.

Updated** - **Are mortgage brokers ok to see clients now, same as estate agents? When can I reopen my shop?

Government guidance on working safely during coronavirus includes a specific section for shops and branches. To view the recent updates to the guidance, please click here. Extra consideration should be given to those people at higher risk.

It also announced that from 24 September 2020 retail staff will need to wear a face mask. Whilst official guidance has yet to be updated, AMI understands this also applies to those working in branches and offices open to the public (or where they come or are likely to come within close contact of a member of the public).

Government has provided advice on the use of face masks in other indoor settings, which can be found here.

The FCA previously issued guidance stating that it would not expect financial advisers to go into work or meet face-to-face as they can offer their services online on by phone and this guidance remains.

It is important that people work safely. Employers have a legal responsibility to protect workers and others from risk to their health and safety which means thinking about the risks they face and doing everything reasonably practicable to minimise them. Additional guidance is available from the Health and Safety Executive.

Firms should undertake a risk assessment and firms with five or more employees should record their significant findings, including: the hazards; who might be harmed and how; and what they are doing to control the risks. Government expects all employers with over 50 employees to document their findings on their websites. Firms should record the decisions they have made, the rationale and how this has been communicated.

New** – **What was the outcome of the FCA test case on Business Interruption (BI) insurance?

On 16 September 2020, the FCA confirmed the outcome of the BI test case. It stated that the Court found in favour of the arguments advanced by the FCA on most of the key issues.

As part of the case, some insurers disputed liability and argued that their policies would only provide cover because of a localised outbreak of disease. The FCA's argument was that 'disease' and/or 'denial

of access' clauses in the representative sample did provide cover following the coronavirus outbreak and that the trigger for cover caused policyholders' losses.

The FCA won this argument and the test case has clarified that 'the Covid-19 pandemic and the Government and public response were a single cause of the covered loss, which is a key requirement for claims to be paid even if the policy provides cover'.

However, not all policies will automatically pay out as the judgment did not state that the insurers involved in the test case are liable across all the 21 different policy wordings that formed part of the representative sample. Instead, each policy will need to be considered against the Judgment and affected policyholders should expect to hear from their insurer in due course. Some insurers will be able to conclude their claims process, whereas others may feel they need to wait to understand whether a specific point in the judgment will be appealed.

To keep up to date with developments, please click here.