

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

Are those working in the mortgage intermediary sector classed as key workers?

[The education provision announced by Government](#) on 19 March 2020 is there to meet the needs of workers who are critical to the COVID-19 response and whose children cannot be cared for safely at home, as well as children who are [vulnerable](#).

The FCA has [set out steps firms should take](#) to help identify key workers in financial services. However, Government guidance states that 'if it is at all possible for children to be at home, then they should be' and the FCA has stated that they 'only expect a limited number of people to be identified as being key financial workers'.

What is the guidance on employees working from the office?

As COVID-19 is a public health emergency anyone who can work from home should do so. The FCA has [issued guidance](#), 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. Firms should record the decisions they have made, the rationale and how communicated.

Should I furlough my employees?

Firms should review their operations, capacity and costs and consider if they have any staff that can be furloughed. It is important that this is done early to maintain cash flow and to obtain Government support. For more information and how to access Government's coronavirus job retention scheme please click [here](#).

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.

If I furlough my employees, will they continue to accrue holiday in the furlough period and then have to take all their holiday before the end of the year?

Furloughed employees will continue to accrue holiday at the normal rate.

The government is [amending regulations](#) to allow employees and workers to carry over up to 4 weeks' paid holiday over a 2-year period. If an employee or worker leaves their job or is dismissed during the 2-year period, any untaken paid holiday must be added to their final pay ('paid in lieu').

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

On 3 April 2020 it was [announced](#) that Government is taking further action to help firms affected by the coronavirus:

- Lenders would not be allowed to request personal guarantees on loans under £250,000.
- The loan scheme would be extended so that it covered all small companies affected by COVID-19 and not just those unable to get commercial funding.
- There would be a new scheme to bolster support for larger firms not currently eligible for loans, under which the government would provide a guarantee of 80% so that banks could make loans of up to £25m to firms with an annual turnover of between £45m and £500m.

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

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.

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?

It appears that this is subject to lender discretion, but also dependent on how their back-office systems work. Some, but not all lenders, are allowing this at the moment. We will continue to work to ensure that lenders support the principle of treating their customers fairly.

It seems that some consumers, struggling to get through to their lender on the telephone have cancelled their direct debits which, if missed and not reinstated could lead them to go into arrears. 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.

Protection

Will protection insurers allow customers a payment holiday?

No announcement has been made on industry-wide forbearance measures for protection insurance policies, however AMI is in discussion with other bodies on this subject. The Protection Distribution Group has [written to insurers](#) and called on them to address the challenge of ensuring customers keep their policies in force. Intermediaries should encourage customers to speak to them if they are having payment difficulties and intermediaries should speak to providers, as they may be able to offer alternative options such as a premium waiver or a reduction in sum assured.

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 is considering how as a trade association we can assist intermediaries in this area.

FCA and other regulatory requirements

In the light of the country going into lockdown, and the effect on companies' cashflow, what is the FCA stance on bailout loans and capital adequacy?

The FCA has published a [statement](#) on financial resilience for solo-regulated firms. 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.

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

The FCA have set out their expectations to help solo-regulated firms apply the SM&CR. This can be found [here](#).

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

The FCA has said it is working on a package of measures to help the 49,000 small and medium firms that pay £10,000 or less a year, including giving them more time to pay. Large firms were still required to make their payment on account on 1 April 2020 or risk a £250 fine plus interest charges.

Firms have the option of using Premium Credit, or another credit providers, 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.

AMI has stated that it is lobbying the FCA to not favour smaller firms at the expense of the larger firms. Whilst I am aware that you represent a wide body of advisor firms are you helping to hasten the demise of smaller firms?

We have been leading the call on FCA to cancel or defer all their and related regulatory fees for all firms. We have been asking Treasury to pay for FCA for this year. AMI has always been opposed to “minimum fees” from the regulator and annually object to their increase.

AMI is very clear that help is needed for small firms and we have secured agreement that FCA will consult on changes to the usual approach to fees for smaller firms next week. This is for the fees due in July. Where possible small firms should be using the self-employed income support scheme to improve their cash flow, or the Coronavirus Business Interruption Loan Scheme. Furloughing support staff is also an option, but to be considered carefully.

The largest 1100 FCA regulated firms (with fees of more than £100k per annum) are not to benefit from the yet to be consulted on FCA fee changes. They have already had to pay their 2020/21 fees this week. This includes a number of directly authorised firms and large networks who look after smaller firms and will have to pass this cost on to them. They are also too large for the Business Rate Support or Grants schemes.

This is why AMI is calling for fair treatment for all and to ensure that we have a thriving advice sector able to support consumers both through the crisis and afterwards.

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 latest [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.

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.

This question 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](#).

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 have raised this with the FCA and are awaiting a response.

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?

To the best of our knowledge there are currently no plans to delay the Directory deadline but this is something we will raise with the FCA at a later date if it is deemed necessary.

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?

The information on the Information Commissioner's Office's (ICO) website states:

'We understand that resources, whether they are finances or people, might be diverted away from usual compliance or information governance work. We won't penalise organisations that we know need to prioritise other areas or adapt their usual approach during this extraordinary period.'

'We can't extend statutory timescales, but we will tell people through our own communications channels that they may experience understandable delays when making information rights requests during the pandemic.'

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.

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 certainly continue. As it stands, the letters are due to be sent from third party administrators to customers from May to September. We have not yet received confirmation that this will be delayed, but with the vast challenges being faced currently by lenders and the impact of social distancing, we are expecting that delay is inevitable.

We will, of course, keep you apprised of any updates.