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## AMI Q&A: COVID-19

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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](mailto:info@a-m-i.org.uk)

### Firms

#### **What is the guidance on employees working from the office?**

Government guidance is clear: staff should continue to work from home where this is possible.

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.

The government has produced [guidance](#) to help ensure the work places of those who cannot work from home are as safe as possible. 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.

#### **Should I furlough my employees?**

The scheme is now closed to new entrants. Employers have until 31 July to make any claims in respect of the period to 30 June.

Changes to the furlough scheme announced on 29 May mean that from 1 July employers have the flexibility to bring workers who have been furloughed at some point back part-time. From 1 July agreed flexible furlough arrangements can last any amount of time but must be a minimum claim period of [seven calendar days](#) (i.e. minimum 3-week furlough period is no longer required). There is also a cap (from 1 July) on the number of employees that can be claimed for in one single claim, which cannot exceed the maximum number of employees claimed for under any claim ending by 30 June.

For further details please read the updated Government guidance [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 my employees are furloughed, 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 has issued [guidance](#) on how holiday entitlement and pay operate during the coronavirus pandemic, where it differs from the standard holiday entitlement and pay guidance.

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

It was announced on 12 May 2020 that the furlough scheme would be extended from the end of June and will remain open until the end of October. The scheme will continue in its current form until the end of July.

Businesses will have the flexibility to bring back employees part-time from 1 July and, from 1 August, businesses will be asked to contribute to furloughed employees' salaries on a scaled basis (the scheme will no longer fund employers' National Insurance and pensions contributions from 1 August and from 1 September firms will have to start contributing to the wages of furloughed staff).

Claims are now restricted to employers currently using the scheme and previously furloughed employees (who have been furloughed at any point since March). The scheme is now closed to new entrants, however, employees on maternity and paternity leave who return to work in the coming months will be [eligible for furlough](#) even if this is after 10 June cut-off date.

Click [here](#) for more details on the scheme.

Government also announced that the Self-Employed Income Support Scheme (SEISS) has been extended and applications for the second grant will open in August. Further [guidance](#) was published by Government on 12 June.

HMRC has created YouTube videos and webinars on various topics related to both the CJRS and SEISS. Please click [here](#) to access these.

**\*New – How can my firm apply for the Jobs Retention Bonus?**

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. More information will be provided by Government on 31 July 2020.

**Can furloughed employees work elsewhere during the furlough period?**

Employees that have been furloughed cannot undertake any work for their employer or associated company. Directors can, however, continue their statutory duties. Furloughed workers can take part in volunteer work (as long as they do not provide service or generate revenue for their employer or associated company).

Furloughed workers can undertake new or existing employment with an unconnected employer, provided their contract allows this. Employers should be clear with their employees on what is allowed and what restrictions exist within their furlough agreements.

### **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)?**

Individuals can continue to apply for the first SEISS grant until 13 July. For more details please [click here](#). Applications for the second SEISS grant will open in August. Please [click here](#) for more information.

### **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**

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.*

#### **Will mortgage payment holidays be extended?**

On 22 May, the FCA announced proposals which will continue support for customers who are struggling to pay their mortgage due to coronavirus and allow customers who have not had a payment deferral to take one. [Finalised guidance](#) was issued on 2 June and came into effect from 4 June.

Customers that haven’t yet applied for a mortgage payment holiday are able to request one up until 31 October 2020.

If customers have already taken a payment holiday but need further support, firms should continue to provide help and, as part of this, should consider a further three-month payment holiday. However, the finalised guidance makes it clear that a firm can agree another form of support with the customer where it is in their best interest (e.g. extension of the term or alternative product; offering a payment deferral of less than three months; reducing or waiving interest). It also states that many customers will be able to resume full payments at the end of a payment deferral period.

Lenders are expected to take reasonable steps to contact their customers in good time before the end of a payment deferral period about resuming payments and to engage with them about their options when it expires.

The guidance also states that they should explain that whilst a worsening status will not be reported to the customer’s credit file in respect of any payment deferral under this guidance, lenders may take into account other information when making future lending decisions, including, for example, information provided by applicants or bank account information.

There shall be no commencement or continuation of repossession proceedings against customers before 31 October 2020.

The FCA has also created guidance for consumers on dealing with financial difficulties during coronavirus, which can be found [here](#).

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

The FCA's guidance has made it clear to firms that they should ensure that taking a payment holiday will not have a negative impact a customer's credit file. Whilst it won't be counted as a missed payment on the credit file, the FCA has stated that 'consumers should remember that credit files aren't the only source of information which lenders can use to assess creditworthiness'.

The FCA also provided the following in response to AMI's queries:

*To minimise the impact of the coronavirus crisis, we have been clear that firms should ensure there is no negative impact on credit files because consumers have been granted a payment deferral. Credit files will show that consumers have been up-to-date with mortgage payments for the duration of the payment holiday or, if not previously up-to-date, will have their arrears status 'frozen'. We will be monitoring firms' adherence with the payment holiday guidance on this issue.*

*We need to bear in mind that lending is a commercial decision for firms based on their own credit risk appetite and the lending criteria which they choose to set. This means that, in practice, lenders may also use other sources, such as bank account information, in their lending decisions. These factors could include changes to income and expenditure, and any increased indebtedness that might result from the payment holiday.*

We continue to challenge this with the FCA, but it is important that advisers check credit files where customers have deferred payment on either mortgage, loans or other credit. This is going to be a difficult conversation, but customers should only be using payment deferment in cases of genuine need.

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

As part of the of the package of measures [announced](#) by Government on 19<sup>th</sup> March, it was confirmed that the 3 month mortgage payment holiday would also be extended to landlords whose tenants are experiencing financial difficulties due to coronavirus.

## **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 currently have access to the Term Funding Scheme, unlike bank lenders. This has resulted in a halt to new and pipeline business in this sector and difficulty funding loans where forbearance has been granted, although there are recent signs of some lenders relaunching their product ranges.

AMI [shared IMLA's note](#) to advisers on the difficulties faced by these lenders and, since then, trade body heads have given evidence at the Treasury Select Committee and discussions are being held between HMT and the BoE to find a solution.

## Protection

### **Will protection insurers allow customers a payment deferral?**

On 14 May 2020, the FCA [issued finalised guidance](#) for firms when dealing with customers of general insurance and protection contracts who may be experiencing temporary financial difficulty as a result of Covid-19. One of the actions highlighted in the guidance that a firm can take is by considering payment deferrals.

Many providers have started to offer payment deferrals and have confirmed how this will operate. Intermediaries should 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 have 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.

### **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.

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.

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](#).

### ***\*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.

The FCA has [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 have asked member firms for evidence of the increases over the last year so that we can present this (anonymised if required) to the FCA to illustrate the extent of the problem. We have collated and analysed the responses and are working with other trade bodies to create a joint statement on the PII situation to present to the FCA.

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.

**\*Updated - Will the Directory deadline be delayed? We're worried that we won't have time to get all our staff certified by 9<sup>th</sup> 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 has [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). The consultation deadline is 14 August 2020.

AMI has 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 2020, 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. The FCA has said that it will produce further communications about its expectations.

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.

AMI will continue to monitor regulatory developments in this area and will respond to the consultation.

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

The FCA has published a [webpage](#) to clarify its position on complaint handling during the crisis.

Handling complaints remains an important function which should continue. Firms should take all reasonable steps to ensure as much complaint handling as possible continues through staff working from home, where this can be done fairly and effectively. Firms should also consider the FCA's [statement](#) on how firms should handle post and paper documents.

FCA expects firms to prioritise:

1. paying promptly complainants who have been offered redress and accepted that offer
2. the prompt and fair resolution of complaints from:
  - consumers who are likely to be vulnerable to harm if their complaint is not resolved promptly and fairly, and
  - micro-enterprises and small businesses who are likely to face serious financial difficulties if their complaint is not resolved promptly and fairly
3. sending timely holding responses to those complainants in 2. where their complaints cannot be resolved promptly.

If a firm cannot deliver these 3 priorities adequately and effectively through home working, then FCA considers it could be appropriate for the firm to maintain the minimal physical onsite presence needed to do so, as long as the site is configured for social distancing in line with Government guidelines.

**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.'*

ICO [guidance](#) 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 need to also consider the [FCA's statement](#) 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 apprised 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 31<sup>st</sup> July.

The FCA did not delay the implementation and firms are reminded that the cheapest rule is effective from 31 July 2020 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.

AMI has recently [issued a newsflash](#) and is having ongoing discussions with the regulator to better understand any guidance around this calculation and will communicate any additional information in due course.

**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. This was updated on 28 May with further fake FCA email addresses added.

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

Yes - the FCA asked around 13,000 firms to complete a 'Covid-19 Impact Survey'. They issued a [statement](#) confirming this. Firms should have received the survey via e-mail between 4-8 June 2020 and should check that the e-mail received is from an fca.org.uk e-mail address. However, AMI understands that this was only sent to mortgage firms with significant protection sales, particularly GI sales.

If you have any questions, please contact AMI by mailing [info@a-m-i.org.uk](mailto: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](mailto: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 the AMI 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

**Is Government prioritising the housing market as part of the restart plans?**

Government announced [guidance on home moving](#) during the crisis, which AMI communicated in a [newsflash to members](#). Pan-industry guidance 'Re-opening the Home Moving Market Safely' has also been issued, which can be found [here](#).

AMI welcomes and is supportive of these changes which put our industry at the heart of restoring economic activity in the country, but firms need to be mindful that this is not a return to normality. The full return to work is likely to take time and the government guidance is clear, staff should continue to work at home if possible.

**Will the Help to Buy scheme be extended?**

Homes England has updated its list of [frequently asked questions](#) for customers in the Help to Buy market. This confirms that the current version of the scheme will end on 31 March 2021 and there are no plans to extend it. The new version of the scheme will operate from 1 April 2021, but this will be available to first time buyers only and will introduce regional property price caps.

Practical completion (i.e. when customers have paid for the home and are given the keys to move in), must therefore take place by 31 March 2021. There may be limited flexibility to complete the purchase after the December deadline, but this should be agreed via Homes England.

**I'm aware that physical valuations are returning but how long will it take for the backlog of cases to be processed and a return to normal?**

RICS has issued recommendations on physical inspections for the purpose of residential valuations and condition-based surveys during Covid-19 (England), which can be found [here](#). However, unfurloughing surveyors, ensuring they are correctly protected and trained on the new procedures, and have the correct safety equipment will take time. In addition, there will be surveyors who cannot or are not comfortable to return to work at present. The safety of staff and customers is paramount.

Surveyors will be working through the backlog of valuations and it is important for intermediaries to be patient and manage their customer's expectations. It will take time for normal service levels to resume. Intermediaries also need to be mindful and sensitive to the fact that there will be customers who may not be able to/feel comfortable letting a surveyor into their property at present.

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

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 or by phone and this guidance remains current, as of 23 July 2020.

The government has produced [guidance](#) to help ensure the work places of those who cannot work from home are as safe as possible. An [update](#) for people who work in or run shops and branches has now also been included and non-essential shops will be able to open on 15<sup>th</sup> June. The [guidance](#) specifies remote working tools should be used to avoid in person meetings, that 2m separation should be maintained and that seating and tables should be reconfigured to reduce face to face interaction. It stipulates that businesses and workplaces should make every reasonable effort to enable working from home as a first option.

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.