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?

Government guidance has been updated to include tier four restrictions. The guidance for all tiers is that employees should continue to work from home if they can.

Offices and contact centres can, if COVID-secure, open under all tiers but employers should consult with their employees to determine who needs to come into the workplace and extra consideration should be given to those people at higher risk. Circumstances that firms may wish to consider include the mental health and wellbeing of an employee and/or safety and security risk e.g. customer confidentiality.

Government guidance on how to make workplaces Covid secure can be found here.

There is separate guidance for individuals who have been identified as clinically extremely vulnerable.

The FCA's statement on workplace arrangements and work-related travel refers firms to the appropriate government guidance for advice on who should work from home, if possible. Firms should ensure that workplaces are safe for those who cannot work from home.

It recommends that for financial services firms, the Chief Executive Officer SMF1 is accountable for ensuring an adequate process for following and adhering to government guidance.

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.

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

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.

***Updated* - What government support is available?**

The Coronavirus Job Retention Scheme (JRS) has been extended until 30 April 2021. The Job Support Scheme (JSS) that was due to operate from 1 November 2020 has been postponed.

Under the scheme government will cover 80% of earnings up to a maximum of £2,500 per month and the employer meets the cost of the employer's NI and employer's pension contributions.

Flexible furloughing is allowed in addition to full-time furloughing.

Guidance on how to claim can be found here.

For more information on the JRS, please click here.

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

The government's business support finder tool helps 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)?

Government has confirmed that eligible self-employed individuals can apply to receive 80% of their average trading profits for November, December and January up to a maximum of £7,500.

If individuals were not eligible for the first and second grants, they are not eligible for the third and fourth grants. Individuals must also reasonably believe that they will suffer a significant reduction in trading profits due to reduced business activity, capacity or demand or inability to trade due to coronavirus (this is a change from the first two grants where individuals were eligible if they had been 'adversely affected' by coronavirus).

Eligible claimants can now apply for the third grant. Claims for the third grant must be made on or before 29 January 2021.

The fourth grant will cover a three-month period from 1 February 2021 until 30 April 2021. Government is yet to confirm the amount payable under this grant.

The grants are taxable income and subject to National Insurance contributions.

For more information about the scheme and how to claim, please click here.

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

The deadline for a CBILS application has been extended until 31 March 2021.

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.

For more information on the CBILS please click here.

Risks arising from loans

The Corporate Insolvency and Governance Act 2020 came into force on 26 June 2020.

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 and are therefore remain liable.

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.

In 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.

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 to 30 September 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. Government announced in November 2020 that it intends to reinstate the temporary removal of the threat of personal liability for wrongful trading from directors until 30 April 2021.

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.

***Updated* - 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. The loan terms can now be up to ten years and businesses that have borrowed less than their maximum (i.e. the lower of £50,000 or less than 25% of their turnover) will be able to top-up their existing BBL. Businesses can make use of this option once and must request the top up by 31 January 2021.

The deadline for applying for a BBL has been extended to 31 March 2021.

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.

What are the rules about collecting data on our employee's 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.

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?

The FCA consulted on extending the availability of payment deferrals (effectively reopening the payment deferral window that expired on 31 October 2020). Finalised guidance has been issued and came into effect from 20 November 2020.

Consumers that have not yet had a payment deferral will be eligible for payment deferrals of six months in total and those who currently have a payment deferral can top up to six months in total. Eligible consumers have until 31 March 2021 to request a payment deferral. After 31 March 2021 existing deferrals can be extended to 31 July 2021 (provided they cover consecutive payments and subject to the maximum six months).

FCA has confirmed that a payment deferral under this extended guidance would not be reported as missed payments to Credit Reference Agencies (CRA). However, it has made it clear that this does not mean that consumers' ability to access credit will be unaffected in future, as lenders may consider a range of information when making lending decisions. It also continues to reiterate that consumers should keep up with payments on their mortgage if they can afford to do so and should only seek support where such support is absolutely necessary.

The FCA has also confirmed that no one should have their home repossessed without their agreement until after 31 January 2021.

The FCA's September guidance (now referred to as Mortgages Tailored Support Guidance) will continue to allow firms to provide tailored support for those customers who will not be eligible for future payment deferrals.

An overview of the Mortgages Tailored Support Guidance

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 (unless the payment deferral is taken under the proposed extended guidance). 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 under the Mortgages Tailored Support Guidance 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.

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

Where a customer takes a further payment deferral after expiry of the June guidance and is not eligible under FCA mortgage guidance for a payment deferral extension, then normal Credit Reference Agency (CRA) reporting will resume. CRA reporting will not apply where a payment deferral is taken under the payment deferral extension (i.e. guidance issued in November).

Firms should be clear with customers about the implications of taking a payment deferral.

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.

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

The guidance noted under the question '**Will mortgage payment holidays be extended?'** applies to landlords.

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.

Protection

Will protection insurers allow customers a payment deferral?

FCA issued finalised guidance to help insurance customers in financial difficulty due to coronavirus. This guidance came into force on 1 November 2020 (however some provisions under the August guidance apply beyond this date, such as if a payment deferral has been granted that goes beyond this expiry date) and will remain in force during the circumstances created by coronavirus until varied or revoked.

FCA expects that if customers can resume payments, they should do so. If customers come to the end of a payment deferral and are still in financial difficulty and entitled to forbearance under forbearance rules, the firm should treat the customer in accordance with FCA rules. A customer who newly finds

themselves affected financially by coronavirus can also be provided with appropriate forbearance to avoid, reduce or manage any arrears that would otherwise arise.

Some of the key changes to the guidance:

- Firms do not have to proactively contact all customers that have missed payments but should consider if it would be necessary or appropriate to contact a customer to offer support and should consider what steps to take where it has been identified that a customer is, or could potentially be, vulnerable.
- The section on premium finance only applies to regulated credit arrangements i.e. does not apply to other arrangements where customers can pay in instalments which do not involve the provision of regulated consumer credit. However, FCA note that firms are not prevented from applying the measures set out in the premium finance section to such arrangements.
- Normal Credit Reference Agency reporting to resume once all of a customer's payment deferral periods have come to an end under the August guidance.

The guidance on distribution remains and firms 'should work with other relevant firms in the distribution chain to help qualifying customers in line with the relevant Handbook requirements and guidance'.

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.

Has the FCA reviewed its product value and coronavirus guidance?

In June 2020, the FCA published guidance setting out expectations for insurers and insurance intermediaries to consider the value of their products in light of the exceptional circumstances arising from coronavirus.

This guidance has since been reviewed and the FCA do not propose to update it.

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?

FCA's October proposals are set to apply until varied or revoked, so there is no set review date unlike the mortgage guidance. It has most likely been done this way to provide flexibility to consumers given the changing circumstances with local lockdowns.

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

AMI members can continue to access our 'guide to saving protection policies' which can be found on our website.

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.

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

On 18 December 2020, the FCA issued an updated statement on SM&CR and coronavirus. This includes dates that firms need to be aware of if they have made temporary arrangements to cover absences or change Senior Manager responsibilities in direct response to the pandemic. This update can be found here.

The FCA page on responsibilities of senior managers is also relevant. The FCA recommend that the Chief Executive Officer Function (SMF1) is accountable for ensuring an adequate process for following and adhering to government guidance. For firms that do not have an SMF1 Chief Executive Officer, this will be the most relevant member of the senior management team.

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

In May 2020, the FCA confirmed that it had 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. The FCA has clarified in this update that all modifications consented to before then will come to an end on that date – this means the maximum period of extension available to firms will reduce the closer we get to 30 April 2021. Therefore, the modification will not assist with a temporary appointment that begins after 5 February 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 responded to this consultation and our response can be found here.

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.

In addition, we have written to those member firms who supplied PII information earlier this year to obtain more specific data. Thank you to all the firms that submitted information. We are in the process of analysing this data and plan to present the additional findings to the FCA.

If a firm decides to obtain a quote from another broker it is advisable to only do so if your existing insurer has declined to offer terms (and your broker has no alternatives), or if the increase to the premium/excess and/or changes to the policy terms (e.g. exclusions) cannot be managed by your firm. However, make sure the alternative broker is aware which insurers have been approached as insurers may decline to quote if they receive a submission from multiple sources. The hardened PII market has reduced insurer capacity and there are only a handful of insurers (circa 3-4 to AMI's knowledge) that are willing to quote for mortgage intermediary firms.

The September edition of the FCA's '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.

Will the Directory deadline be delayed? We're worried that we won't have time to get all our staff certified by 9th December?

FCA announced that it extended the deadline for solo-regulated firm to 31 March 2021 for:

- The date the Conduct Rules come into force for staff who are not Senior Managers.
- The date by which relevant employees must have received training on the conduct rules.
- The deadline for submission of information about Directory Persons to the Register.

References in its rules to the deadline for assessing Certified Persons as fit and proper.

Data from solo-regulated firms will be incrementally displayed as it is submitted - the data will start to be published from 14 December 2020. The last date for single entry submissions to appear from the outset of this publication was 9 December 2020.

We understand from an FCA update that firms with more than 10 directory persons have been contacted by the FCA and informed of the dates available to use multiple data submission, however following discussion with some member firms we understand this has not always been the case. If firms have not been contacted but have more than 10 directory persons and want to use the multiple add or amend template submission method, the relevant information is as follows:

- Firms submitting after the earliest publication date but before the deadline, should submit between 11 January and 18 March. Firms can use the single submission form to submit up to 31 March 2021 deadline.

FCA has also published a user guide for adding or amending multiple directory persons data.

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

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

FCA has updated its guidance on how firms should handle complaints during coronavirus. It states that whilst firms' operations continue to be affected, it considers that firms have now had enough time to embed new ways of working and, a failure to comply with complaint handling requirements 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 24 September) relating to its regulatory approach during the pandemic states:

We will be flexible in our approach, taking into account the impact of the potential economic or resource burden our actions could place on organisations, particularly those engaged in tackling the pandemic or supporting vulnerable people.

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 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.

NatWest, Halifax, Santander and the West Bromwich Building Society have confirmed that they will be implementing the new modified affordability assessment through a specific range of products to help mortgage prisoners. We expect more lenders will follow.

The mailings have now commenced and will be completed by 15th January 2021.

Mortgage prisoners will be directed to the Money and Pensions Service website to help assess their eligibility and help find a mortgage broker who will be able to discuss their options.

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.

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.

We are aware of fake FCA emails in circulation that have been sent to firms regarding a due diligence request. The FCA page notes the address servicechecks@fca.org.uk but AMI is aware of similar emails from financialchecks@fca.org.uk and fcaserviceschecker@fca.org.uk. Firms should not open emails and any attachments from these addresses as it is a phishing attempt.

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

FCA issued a Covid-19 impact survey in June (tranche one) to 13,000 firms and rolled this out to a further 9,500 firms at the beginning of August (tranche two).

This survey was repeated to tranche one in September and in November for tranche two.

Mortgage intermediaries fall under the tranche two portfolio and should have received and responded to the survey as the response due dates have now passed.

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

***Updated* - Can home moves and surveys take place and can customers visit estate agents in all tiers?**

Government guidance on home moving during the Covid-19 outbreak has been updated to reflect the addition of tier four. People are still able to move home, estate and letting agents and removal firms can continue to work and property viewings can take place in all tiers. Surveys can also take place in all tiers.

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 2020 to 28 February 2021. The final date for reservations under the current scheme is 15 December 2020. Applications for the new scheme can now be made.

The deadline for legal completion under the existing scheme 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.

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. In areas under tier one and tier two, all retail can remain open. In tier three, all retail can remain open except for non-self-contained shops inside closed premises where the non-self-contained shop cannot be accessed directly from the street. In tier four areas all non-essential retail must close.

Retail staff continue to be required to wear a face covering and this includes employees in premises providing professional, legal, or financial services. For more information on face coverings please click here.

Employers should continue to follow 'Covid-19 secure' guidelines to reduce the proximity and duration of contact between employees. Extra consideration should be given to those people at a higher risk.

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.

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.

The appeal in the Supreme Court was heard from 16 November to 19 November. The judgment should be made in January 2021.

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