



## COVID-19 FCA Update

### A. Matters for the firm

#### **i. Operational Resilience**

The FCA already expected firms to have contingency plans in place and it is working with the Bank of England to review those plans at a range of firms.

COVID-19 has brought operational resilience to the forefront where the industry has typically lagged behind. The FCA have no objections to different working arrangements for staff as long as firms can continue to meet the required standards and have systems and controls in place to maintain regulatory compliance, i.e. supervision, motivation, training, assessment of competence, etc.

The focus on operational resilience since COVID-19 remains relevant in relation to third party suppliers, the use of data and cyber concerns.

#### **ii. Senior Managers**

Senior Management Functions (SMF) - There is no need to designate a single SMF responsible for all aspects of your response to coronavirus and it is likely that either the CEO or a Director will already have responsibilities for business continuity, information security and outsourcing, and so is largely expected to manage the impact of COVID-19. Other aspects of your response could sit with different SMFs.

Changes to Senior Managers and Responsibilities - There is greater flexibility around governance arrangements for firms directly affected by COVID-19. For 'significant changes' to a SMFs responsibilities the FCA will not need an updated version of the Statement of Responsibilities to be submitted or the completion of a Form D.

If a mandatory SMF is absent, the firm must appoint an individual to continue performing their role. For temporary or unforeseen cover, individuals can perform SMFs without approval for up to 36 weeks (was 12).

Normally 'Prescribed Responsibilities' (PRs) should be reallocated to other SMFs until a permanent replacement is found. If this is not possible due to COVID-19, PRs can be temporarily allocated to someone acting as a SMF under the 36 week rule. They will not have a Statement of Responsibilities and so recordkeeping of their temporary PRs is essential.

Furlough - It is permissible to furlough SMFs if required, although mandatory SMFs should only be furloughed as a last resort. There is no need to submit a Form C or a Form J because the furloughed SMF retains their approval. The firm will still need to comply with requirements for fitness and propriety and the allocation of PRs.

Certification - Certification policies and processes can be adjusted to allow you to conduct these remotely. A firm must take reasonable steps to properly complete annual certifications of employees that are due to expire (although 2020 remains the initial certification year)

### **iii. Financials and Reporting**

For large firms, the FCA has permitted an extra two months for firms to publish their audited financial statements. No rules have been relaxed for insurance broker solvency and client money handling.

I do not need to remind any of you reading this update that the state of the economy is perilous and how much the government has and will spend defending the economy. This is a critical time for brokers with business clients in the sectors most affected by COVID-19 in that if those clients cease to trade then they will no longer require insurance. If the income from these clients is sizeable and has a major bearing on your firm then I am sure you will already have given this deep thought.

What should you be looking at? The list is not exhaustible but includes: expenditure, reliance on key clients, government help that is available, furloughing/staff matters, a realistic stress-test moving to a pessimistic one should things go pear-shaped.

### **iv. CPD**

FCA expect that relevant individuals remain competent to carry out their work and that effective and consistent CPD is an essential part of this but in these exceptional circumstances FCA are allowing firms to defer individuals' CPD to the next CPD year. FCA expect most individuals will be able to continue completing CPD whilst on furlough or working from home and CPD activities can include e-learning and other content that can be completed at home. FCA expect firms will support furloughed staff with materials to complete their CPD but also recognise that there could be exceptional circumstances when individuals may have difficulty completing the required minimum CPD hours.

So, what counts as "exceptional circumstances"?

- When individuals during the current pandemic:
  - are needed to carry out extra duties to manage risks, and/or to provide support, to consumers and businesses during the current situation;
  - have caring responsibilities, such as having to care for a partner, child, parent, grandparent or sibling;
  - have difficulties accessing CPD material, for example, due to technical difficulties or unavailable material, and
- Where it is not realistic to expect the individual also to fulfil the CPD requirements.

### **v. BI Insurance**

The FCA will seek legal clarity on BI insurance policy wordings to resolve the uncertainty on whether COVID-19 claims are covered and have received significant input from both customers and brokers. Ramifications for brokers include the potential that if insurers are not required to pay claims that clients with unsuccessful BI claims then sue their brokers for negligent or deficient advice. Please ensure your sales process and documentation is water-tight (did clients ever ask for pandemic cover, have you ever advised on it and was a product available before all this kicked off?) and watch your own professional indemnity insurance renewals as COVID-19 may be subject to an exclusion which will be a huge issue for policies on a claims made basis.

## **vi. Complaint Handling**

The FCA clarified its position on complaints handling in the current circumstances. This is to be reviewed and updated in 3 months' time.

### Capacity and Priorities

Complaint handling functions should continue to operate, and firms should take reasonable steps to handle complaints fairly and effectively despite people working from home. Firms are to prioritise:

- paying redress promptly when it has been offered and accepted
- complaints from:
  - those who are vulnerable
  - micro-enterprises and small businesses likely to face serious financial difficulties
  - sending timely holding responses to micro-enterprises and small businesses where complaints are not resolved promptly

If a firm cannot do this, then it may be appropriate for the firm to have minimal on-site presence if this can comply with social distancing requirements.

## **vii. Vulnerable Consumers**

The FCA has reminded firms of its vulnerable customer definition and circumstances that can cause vulnerability. It stated that COVID-19 is likely to worsen or change personal circumstances, even for those who would not normally consider themselves to be vulnerable.

For example, this could be through loss of income, the impact of isolation on mental/physical health, caring for others and, for key workers, their extreme working conditions and exposure to the virus.

Micro-enterprises and small business can also be susceptible to harm if a firm fails to act with appropriate care by resolving complaints promptly and fairly.

## **B. Consumers**

The FCA wants firms to focus on consumers during this period. It stressed the importance of keeping individuals' circumstances in mind and it welcomes initiatives that go beyond usual practices to support customers.

As always, firms should be acting honestly, fairly and professionally in accordance with the best interests of their customers. All communications should be clear, fair and not misleading.

There is likely to be surge in complaints, in particular, around declined claims and cover limits. Firms should still deal with complaints promptly. Again, if they are unable to do so within eight weeks they should inform the FCA. The Financial Ombudsman Service has online pages for both consumers and businesses on its approach to travel, business interruption and wedding insurance complaints:

<https://www.financial-ombudsman.org.uk/businesses/complaints-deal/complaints/coronavirus-COVID-19-information-businesses>.

Any ambiguity in the policy wording about the extent of cover should be interpreted in favour of the consumer.

## **i. Product Suspension and Renewals**

Firms may decide to suspend product offerings or make changes to existing products at renewal. When doing this, they must consider the needs of customers through:

- Reliance on renewal for continuity of cover (taking into account any vulnerabilities);
- Clearly explaining and communicating policy coverage and exclusions (and changes);
- Considering any exceptional cases of customer need ;
- Offering any alternative products that are in the customer's best interest and meet their demands and needs.

## **ii. Mid-Term Adjustments**

To vary any contractual terms, firms need to consider:

- Whether the contract provides for the type of change;
- If the terms are fair and transparent under the Consumer Rights Act 2015 (or the Unfair Terms in Consumer Contracts Regulations 1999, as appropriate);
- If the term is being applied properly in accordance with the contract (e.g. notice periods);
- Relevant laws and compliance with any other relevant FCA rules.

## **iii. Product Specific Considerations**

Travel - Communicating exclusions clearly and being fair when circumstances changed since the customer purchased insurance or booked a trip, where they had a reasonable expectation that cover would continue. The FCA will delay the implementation of signposting rules for travel insurers.

Motor and Home - flexibility around customers' temporary changes in how they use their vehicle and home address. For motor insurance, this could involve being lenient on individuals who are unable to have an MOT, considering the Government's extension of six months for MOTs due to expire on or after 30 March 2020.

Private Medical - customers due to receive treatment may be impacted by private hospitals assisting the NHS. The postponement of non-urgent care should be communicated effectively, timely and compassionately to consumers.

Business Interruption – most basic policies do not cover pandemics and there is no obligation to pay out. However, where there is a clear obligation to pay, claims should be assessed and settled quickly. If there are reasonable grounds to pay part of claim but not the full amount, an interim payment should be made.

## **iv. Product Value**

The FCA set out guidance for insurance firms to consider the value of their products in light of the exceptional circumstances arising from COVID-19. The measures come into force on 3 June and insurers/manufacturers have 6 months in which to consider and implement these proposals.

## **Application**

The guidance applies to all firms carrying on regulated activities relating to all non-investment insurance products - product manufacturers in particular. It is relevant to all insurance products regardless of the type of customer (retail and commercial), except for reinsurance.

## **Product Review and Assessment**

The FCA reminded firms that they are already required to regularly review their products:

“Product manufacturers should consider whether a product, including its costs and charges, remain compatible with the needs, objectives, interests and characteristics of the target market.”

The FCA expects firms to assess if COVID-19 has materially affected the value of their insurance products. This may mean that:

- the firm or the product itself cannot deliver a benefit. For example, in claims where service providers movements are restricted (e.g. boiler servicing), or for medical cover where customers cannot access certain benefits;
- the customer cannot make a claim because the underlying event is no longer relevant. For example, public liability insurance for businesses that are unable to open.

There is no expectation to reassess product value where claims are still possible but the likelihood of a customer making a claim has changed, e.g. a reduction in car usage.

## **Appropriate Action**

Where firms identify that a product is not delivering the value intended, they should consider taking appropriate action. This includes:

- delivering benefits in a different way;
- the provision of alternative, comparable benefits;
- reducing premiums for the duration of the change in value;
- refunds or partial refunds of premiums already paid - note these are unlikely to be treated as mid-term adjustments for the purpose of ICOBS if they do not involve changes to the product itself.

There are no specific mandatory actions. Firms should consider how best to address any changes in circumstances and identify the right steps to take. However, they must be able to demonstrate how they meet the obligations at a product level and treated their customers fairly.

There may have been a material change in the value of products for customers in temporary financial difficulties due to COVID-19. In these cases, firms are to consider product value when customers contact them, or when they contact customers, about missed payments.

To give firms sufficient opportunity to assess the overall impact of COVID-19, they will be given 6 months to complete reviews of their product lines and decide on any action(s).

In line with existing obligations, firms are expected to communicate clearly with customers where they have identified an issue and are taking action to address this.

## **v. Customers in Temporary Financial Difficulty**

The FCA have set out guidance and the measures come into force on 14 May 2020 and will be reviewed and updated in 3 months' time.

The guidance sets out expectations for firms dealing with customers who are experiencing (or are reasonably expected to experience) temporary financial difficulty as a result of COVID-19 (a 'qualifying customer').

The aim is to help these customers to minimise the impact of temporary financial distress whilst continuing to provide insurance that meets their demands and needs.

## **Application**

The guidance lists the regulated firms it applies to including insurers, intermediaries, lenders, brokers, debt collectors and others that operate in insurance and premium finance. The extent the guidance is relevant to a firm depends on its role and relationship with the customer. Firms will need to work with others in the distribution chain to assist qualifying customers.

For insurers and insurance brokers, the guidance applies to eligible complainants (DISP 2.7.3R). Likewise, for premium finance agreements, it is not intended to capture lending for business purposes (incl sole traders and SMEs).

The FCA refers to premium finance as: “credit that is provided when there is a regulated credit agreement with the customer, specifically for the purpose of enabling the customer to pay their insurance premium in instalments”. Other arrangements which facilitate the payment of insurance premiums in instalments are within scope of the guidance, e.g. credit provided under an exempt credit agreement on a pay-as-you-go basis.

The guidance does not apply to customers already in financial difficulties before COVID-19 instead the existing forbearance rules and guidance in CONC continue to apply.

## **When to Act**

There are circumstances where firms should support customers who may be in financial distress as a result of COVID-19. Firms will need to contact clients who have missed instalments otherwise where a customer contacts the firm because:

they are having difficulty making repayments;  
they wish to reduce cover;  
they are enquiring about their insurance cover because of COVID-19.

## **Actions to take**

Firms should consider how to meet their obligations under FCA rules, what options can be provided to the customer and steps to take to give customers fair outcomes. The firm may:

- re-assess the risk profile. For example, some motor insurance customers might not use their vehicle or might no longer use it for business purposes and could be offered lower premiums
- offer other products that would better meet the customer's needs and revise cover accordingly. For example, a motor insurance customer might no longer need add-ons like legal expenses cover, key cover or other products
- give options such as payment deferrals to avoid cancellation of necessary cover, waive cancellation fees and fairly assess new premiums for customers who had to cancel and then later return
- waive fees associated with adjusting the policy in line with the other options set out above

The action could result in a reduction in the customer's monthly payment or, for customers who paid in advance, could result in a partial refund of their premium.

Any adjustments to cover can be done short-term (for a period within the policy duration) or longer-term (the remainder of the policy). For short-term changes, the firm should take reasonable steps to reassess the customer's situation when the period comes to an end. This could be by using an expiration date or inviting customers to make contact when their circumstances change.

The same steps should be considered across all the products the customer holds with the firm.

The different solutions available should be made clear in communications and customers should be encouraged to make contact if they are experiencing financial difficulty as a result of COVID-19. This should be made as easy as possible, considering the needs of vulnerable customers.

### Rates of interest

If changes to insurance cover do not help customers paying in instalments, firms should review interest rates associated with instalments. They should ascertain whether they are still fair in the exceptional circumstances caused by COVID-19.

### Payment Deferrals

If customers are still facing payment difficulties, then firms are expected to consider granting payment deferrals unless it is not in the customer's interests to do so.

This means the customer is allowed to make no payments for a specified period, without being in arrears, and without the firm (or another in the chain) cancelling due to non-payment. No other party in the chain should seek payment from the customer until the payment deferral has ended.

The deferral period can be rolling and is expected to be granted for a period of 1 to 3 months.

Firms should...	Firms should not...
<ul style="list-style-type: none"> <li>- grant payment deferral if the customer wants it and it is in their best interests</li> <li>- allow customers to request deferral for up to 3 months after the guidance comes into force</li> <li>- give adequate information on the implications of a payment deferral</li> <li>- consider interest charges to be accrued, the interest rate and the remaining term when deciding if a payment deferral is in the customer's best interests</li> <li>- use the deferral period to engage with customers to understand the likelihood of them being able to resume payments</li> <li>- reduce the possibility of a customer suffering adverse consequence as a result of a payment deferral or other solution e.g. the deferral should not be a determining factor in new credit / affordability assessments</li> </ul>	<ul style="list-style-type: none"> <li>- apply any (default or arrears) charge or fee in connection with the granting of the payment deferral or payments missed</li> <li>- report the worsening arrears status on the customer's credit file during the payment deferral period. However, where additional forbearance is required e.g. waived interest and changed, this can be reflected in the usual way.</li> <li>- make enquiries with each of customer to decide if the request for a payment deferral is connected to COVID-19. The FCA has temporarily disapplied CONC 6.7.1 8R and 6.7.19R for this reason.</li> <li>- seek payment accrued interest until the deferral has ended</li> </ul>

<p>- work with customers and Credit Reference Agencies to ensure credit reference files record no default or worsening arrears status where customers:</p>	
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- were unable to access a payment deferral before missing a payment due to the firm's operational difficulties
- entered into a similar arrangement which resulted in their worsening arrears status being reported

At the end of the deferral period firms:

- can seek payment of accrued interest charges;
- should work with customers who are unable to resume payments to help resolve any difficulties before payments are missed;
- ought to waive any interest accrued during the relevant period for customers who are entitled to forbearance under the normal rules.

#### Other Options

If payment deferral is inappropriate, the firm should, without unreasonable delay, offer temporary relief in other ways to treat the customer fairly. These could include:

- accepting reduced payments;
- rescheduling the term;
- waiving missed or late payment fees;
- amending the repayment date.

Firms can go beyond the guidance and provide additional assistance, including writing off unpaid repayments as well as any associated interest, fees or charges.

For brokers who have arranged premium finance on a recourse basis, where bad debts fall to be covered by them, then take care as this may have been unbudgeted for and could impact the financial solvency of the firm. Also bear in mind that any returns of premium will also require a commission clawback – again, unlikely to have been considered in any proper assessment of financial resilience.

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