



COVID-19 Complaints Toolkit (July 2020)

What is the COVID-19 Complaints Toolkit?

A crucial challenge that firms face during the pandemic is managing the risk of complaints being made that relate specifically to COVID-19. In recent months firms has seen extensive regulatory change to support customers in financial difficulty through the introduction of payment deferrals and other forbearance methods – all of which have been introduced at very short notice. Alongside this, firms have had to adapt their processes to deliver additional communications to customers, so they can make informed decisions on the assistance they require. During this time, firms will need to maintain an accurate record of what they have been required to undertake, when, and by whom. This information will keep us aware of our responsibilities and help to mitigate against complaints arising in the first place, while also assisting in preparing comprehensive responses where they do.

To help members effectively manage complaints during this challenging time and beyond, we have prepared this **COVID-19 Complaints Toolkit**. The toolkit provides you with a one-stop shop for information on complaints handling during COVID-19. It outlines the latest **regulatory guidance** and links to useful information on complaints handling from the Financial Conduct Authority (**FCA**), the Financial Ombudsman Service (**FOS**), the Information Commissioner's Office (**ICO**), as well as useful information on Claims Management Company (**CMC**) obligations at this time.

The toolkit also outlines several **key considerations** for complaints handling, and points out where firms can find other additional information, guidance and training from the FLA.

The COVID-19 Complaints Toolkit is an **evolving document**. We will continue to update the toolkit across the COVID-19 period with the latest information on managing complaints. We also welcome member feedback on emerging challenges and issues within complaints management.

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1. FCA Guidance on complaints handling during COVID-19

The FCA published guidance on **1 May 2020** that clarifies their position on firms' complaint handling in the context of coronavirus. You can read the guidance [here](#). It outlines the FCA's **key priorities for complaints handling**, as well as its guidance on:

- Complaints handling quality control and firms experiencing difficulties;
- Vulnerable consumers;
- Considerations for CMCs (**see section 6 below**) and the Financial Ombudsman Service (FOS), including FOS' general approach; and,
- PPI complaints.

Key priorities for complaints handling

- 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**.
- The regulator understands that firms' capacity to handle complaints could be reduced because of coronavirus. Firms are **expected to prioritise**:
 - Paying promptly complainants who have been **offered redress and accepted that offer**.
 - 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.
 - Sending timely holding responses to these complainants, where their complaints cannot be resolved promptly.

Vulnerable consumers

- The FCA's definition of a **vulnerable consumer** can be found in its [Approach to Consumers](#). It's also worth noting the extension to the definition of vulnerable customers to include micro-enterprises and small businesses. The FCA say: "*Finally, our vulnerable consumer definition was developed with individuals in mind. However, firms should be aware that micro-enterprises and small businesses can also face circumstances that can make them especially susceptible to harm if a firm's failure to act with appropriate levels of care means their complaint is not resolved promptly and fairly*" (FCA's Statement on Complaint Handling of 1 May).
- In its guidance for complaints handling, the regulator notes that firms should be aware that coronavirus and the associated public health measures are likely to exacerbate the personal circumstances that can cause vulnerability.
- In this respect, the FCA uses the following as examples of circumstances which can exacerbate or suddenly cause vulnerability:
 - Loss of income from losing employment or being furloughed;
 - The impact of isolation on mental and physical health, and people's ability to work and care for others; and,
 - In the case of some key workers, the impact of extremely demanding working conditions and greater exposure to the virus itself.

- In respect of complaints handling, the FCA notes that firms must be aware of customers vulnerable to harm if the firm has not acted with **appropriate levels of care**, such as resolving their complaint promptly and fairly.

Maintaining the quality of complaints handling

- The FCA does not expect any reduction in the quality of firms' complaint handling. The regulator notes that firms should ensure they continue to meet the relevant obligations, including investigating complaints competently, diligently and impartially, and paying appropriate redress or making other appropriate remediation.
- In this respect, the current COVID-19 circumstances **should not** materially affect firms' ability to:
 - **Tell consumers about their complaint procedures and those of the [Financial Ombudsman Service](#)**, noting that the FOS' [Standard Explanatory Leaflet](#) can be provided electronically (see also **Section 2** below);
 - **Enable consumers to submit complaints**. The FCA notes that firms may need to restrict more resource-intensive complaints channels, such as telephone lines, **to consumers who cannot use other channels**, such as customers with whom firms do not interact online.
 - **Acknowledge receipt of complaints**, particularly where the firm has the technology to send automated responses by email or online to complaints made electronically.

Firms experiencing difficulties

- The FCA recognises that operational challenges mean that some firms may find it more difficult to meet certain requirements in [DISP 1.6](#); in particular:
 - The requirement to provide a final response to complaints within 8 weeks of receipt; and
 - A holding response explaining why the firm has been unable to provide a final response within the timeframe.
- The FCA asks that any firm that has material difficulties complying with DISP 1.6, or other complaint handling requirements, should inform their usual supervisory contact or contact firm.queries@fca.org.uk, and inform the regulator of **the steps it is taking to manage and address its non-compliance**.

2. What have FOS said about complaints handling and COVID-19?

The Financial Ombudsman Service (FOS) has a series of webpages for financial businesses setting out their approach to complaints caused or affected by COVID-19. This can be found [here](#). This page also contains some operational information about the service that might be helpful for businesses.

This FOS webpage will help firms in the following areas of COVID-19 complaint handling:

- ✓ How to contact the FOS at this time;
- ✓ Important information for financial businesses;
- ✓ Their approach to complaints; and,

- ✓ Specific product complaints guidance, including for banking (including around s75), credit (including car finance), insurance and mortgages.

FOS determines complaints by reference to what is, in its opinion, fair and reasonable in all the circumstances of the case. Therefore, the challenges faced by firms during this period, and what counted as good industry practice at the time, will form part of that assessment. Many of the FCA's rules, such as those on promptly investigating complaints, already give firms significant flexibility. Where the FCA issue guidance that gives firms additional flexibility to help them deal with difficult operating conditions, such as the [COVID-19 guidance](#) they have published on delivering temporary assistance to customers via payment deferrals, the FOS have said they will take this guidance into account.

Both the FCA and FOS have exchanged letters providing additional clarity for firms on their approach/es to assessing complaints relating to the range of targeted temporary measures introduced by the FCA to help consumers during the pandemic (see **Section 3** below for more information on the FCA's letter and the FOS's response), as well as complaints about the Government's Coronavirus Business Interruption Loan Scheme and Bounce Back Loan Scheme ([FCA's letter](#) and the [FOS's response](#)).

3. How will the FCA and FOS work together on complaints?

- Sheldon Mills, FCA Interim Director of Strategy and Competition, [wrote to FOS](#) on **15 April 2020**, noting that the range of temporary guidance developed by the regulator was designed to 'ensure firms can work at pace, and under difficult conditions, to support their customers'.
- The letter notes that this guidance has, in places, 'meant changing our normal expectations of what firms need to do, so that they can best serve their customers' interests during this time'.
- The letter asks FOS to confirm that in determining what is fair and reasonable in all the circumstances of the individual case, the Ombudsman will take account of:
 - The operational challenges faced by firms during this period;
 - The FCA's revised expectations of what constitutes compliance with its rules, guidance and standards; and,
 - What counted as good industry practice at the time.
- In particular, the letter asks that where the FCA issued guidance that gives firms additional flexibility to help them deal with difficult conditions, the Ombudsman will take this guidance into account.
- Caroline Wayman, Chief Ombudsman, [responded to the FCA's letter](#) on **16 April 2020** and noted that, in deciding what is fair and reasonable in the circumstances of an individual complaint, FOS will 'take account of the FCA's revised expectations of what constitutes compliance with its rules, guidance and standards, as well as good industry practice at this time. This includes guidance which gives firms additional flexibility to help them deal with difficult conditions'.

4. ICO Guidance on information requirements during COVID-19

The Information Commissioner's Office (ICO) has created a Data protection and coronavirus information hub on its website. This can be accessed [here](#).

On this hub, the ICO provide information to help individuals and organisations navigate data protection during the pandemic. This could help members receiving either mass Data Subject Access Requests (DSARs) or general data complaints during this time.

Areas covered, with link, include:

- [How they will regulate during coronavirus](#) – This document sets out ICO’s regulatory approach during the Coronavirus pandemic
- [Coronavirus and personal data](#) – what you need to know
- [Data protection and coronavirus](#) - what you need to know
- [The ICO’s regulatory approach during the coronavirus](#)
- [Combatting COVID-19 through data](#): some considerations for privacy
- [Freedom of Information Requirements \(FOS\) and Coronavirus](#)- What you need to know
- [Data protection and working from home](#) – What you need to know

In late 2019, the ICO issued [draft right of access guidance](#). This closed for consultation in early February 2020. The FLA responded to help improve the wording in order to prevent potential CMC misuse of DSARs requests. The final guidance has yet to be published.

The finalised guidance should be particularly relevant as it will explain the rights that individuals have to access their personal data and the obligations on data controllers. The guidance also explores the special rules involving certain categories of personal data, how to deal with requests involving the personal data of others, and the exemptions that are most likely to apply in practice when handling a request. This guidance will be crucial when dealing with DSAR complaints and how to generally respond to mass DSAR requests.

5. COVID-19 guidance from the Money & Pensions Service (MaPS)

The Money & Pension Service (MaPS) also have a consumer-focused COVID-19 hub which looks at the impacts of coronavirus for consumers and informing them on what they are entitled to by way of assistance. This is less likely to be of direct relevance to complaint handling, *per se*. However, it does include a section on car finance payments and what consumers are entitled to do in respect of the effects of the pandemic (payment holidays etc.). The full hub can be found [here](#).

6. CMCs: The Regulator’s expectations

The FCA is responsible for regulating Claims Management Companies (CMCs). In their guidance for complaints handling, they indicate that:

- While the circumstances relating to coronavirus continue, the FCA **expects** CMCs to allow firms a reasonable amount of extra time, **beyond 8 weeks**, to give a final response before referring complaints to FOS.
- The FCA considers a reasonable amount of time to take account of current firm operational challenges. CMCs are expected to do the same unless they can show **a particular urgency in the individual complaint and circumstances of the complainant**.

- In turn, the FCA indicates FOS will have regard to the current exceptional circumstances and focus on **resolving complaints for vulnerable customers**. In dealing with CMCs, they may:
 - return a complaint to the CMC and **ask the firm to get in touch with the CMC directly** to discuss timings and the way to resolve the complaint.
 - The FCA expects CMCs to cooperate with the FOS in this and play their part by acting professionally and reasonably.
- The FCA also acknowledge that firms are likely to experience challenges currently in responding to Data Subject Access Requests (DSARs) within the usual timeframes. They encourage CMCs to maintain dialogue with firms to understand these challenges, and to consider any guidance from the Information Commissioner's Office (ICO) (refer to **Section 4** above). Where CMCs cannot resolve issues with firms in this way, the ICO have stated that they would prefer them to speak to it directly before making complaints to it about firms.

6.1 CMC complaints: Further considerations

In processing CMC claims it is worth noting the following sections under the Claims Management Conduct of Business (CMCOB) rules which authorised CMC's must adhere to. They are: CMCOB 2.1.7R and 2.1.8G which say a CMC must not take or pursue a claim on behalf of a customer if the CMC knows or has reasonable grounds to suspect that the claim does not have a good arguable base, or is frivolous, and a CMC should take all reasonable steps to investigate the existence and merits of each element of a potential claim before making or pursuing the claim. If the claim/s don't meet these basic regulatory tests, then firms should go back to the CMC to this affect.

Firms may also want to consider maintaining a record of CMC practice, for example, poorly drafted complaints/templates and those without Letters of Authority (LOA) etc – there may also be other metrics which could usefully be monitored. Such information will help firms both challenge poor CMC behaviour direct with CMCs and when reporting non-compliant CMCs to the FCA. Members can also notify these to the FLA, as we regularly feedback poor CMC practices to the FCA and Solicitors' Regulatory Authority. This helps to ensure that the complaints system is improved for all parties, the customer, firms and CMCs.

7. Key considerations for firms

There are several considerations for firms regarding complaints handling during the COVID-19 period.

Customer communications

The speed with which the impacts of COVID-19 have been felt, as well as the regulatory response, means that clear customer communications are crucial so customers can make informed decisions. As noted above, customer communications have been emphasised in the FCA's complaints handling guidance. They are also a major point of focus for FOS.

Firms will need to check that their customer communications include **all** the requirements set out in the FCA's suite of temporary guidance on Covid-19 covering:

- [Mortgages](#)
- [Personal loans](#)
- [Credit cards & revolving credit](#)
- [Motor Finance](#)
- [Rent to Own, BNPL and pawnbroking](#)
- [High Cost Short-Term Credit](#)
- [Premium Finance](#)

The FCA has also published [Information for Consumers](#) on Covid-19 and factors they should take into account when applying for a payment deferral. Further information was also published for [mortgage customers](#).

In the FCA's [Feedback Statement 20/9](#) concerning the updated Guidance for personal loans, credit cards/revolving credit and overdrafts, reference is made (see paragraphs 2.58 to 2.59) lenders' concerns at the risk of subsequent FOS decisions not taking sufficient account of FCA guidance on payment deferral, resulting in potentially unfair outcomes that do not reflect the current exceptional circumstances. In response, the FCA noted:

'The FOS is independent but we have made it aware of the guidance, and the need for swift action by firms to support consumers who are impacted as a result of coronavirus. The FOS has confirmed that it will continue to keep its website updated with details of its approach to complaints.'

Credit Reference Agency Reporting

The FCA's Covid-19 Guidance for firms (see above) includes requirements when lenders are reporting payment deferrals to the Credit Reference Agencies. Where a payment deferral is in place, this should not result in a worsening status on the customer's credit file. The credit reference agencies have produced guidance for firms on how these records should be reported – both when an initial payment deferral has been provided and then when a subsequent deferral or other form of forbearance is offered.

The FCA's Guidance also requires lenders to advise customers of this position and that and that lenders may consider other information when making future lending decisions, including, for example, information provided by applicants or bank account information.

Firms will need to ensure that customers receive clear information on the impact of payment deferrals on their credit files and what other information might indicate that a payment deferral has been provided.

Record keeping, Training and Monitoring

In a complex and fast-moving space clear communications should be accompanied by diligent record-keeping. Firms will need to retain comprehensive records of communications with customers before, during and post a payment deferral; evidence of the reason for or against a decision (especially regarding payment deferrals when they weren't given), and be able to demonstrate robust systems and processes for treating customers fairly. This helps tell the

story of why a customer was treated in a certain way along the journey, and the steps taken to support them.

In the FCA's updated Covid-19 Guidance for firms published during June and July 2020, the FCA have included a new section setting out more detailed requirements linked to ensuring staff are properly trained to implement the firm's process for following the guidance, as well as the need to keep records of how the options presented were in the customers' interests. Firms should also review records and refine their approach, where required. The FCA state:

"Firms should ensure that staff are adequately trained to enable them to implement the firm's process for following this guidance.

Firms should keep records of how any process was designed sufficient to demonstrate that the options presented were consistent with customers' interests.

Firms should record and monitor initial and further payment deferrals offered, any alternative measures provided, as well as any issues which might impede customers' ability to access the assistance required under this guidance. Firms should use this information to keep their processes for following this guidance under review to ensure that customers' interests are being met and to refine their approach

Firms should also retain any other supporting documents- these could include training manuals (and records of completion), compliance monitoring of the new procedures etc. These should help firms in the future to explain their approach and show a fair approach was taken at a firm level e.g. to FOS. It may also help to further evidence as to why a certain action was taken in an individual customer's case.

Specific customer groups

Members may also want to consider whether certain categories of customer may require different treatment at this time when dealing with complaints, for example, key workers or vulnerable customers. Where firms are dealing with high volumes of customers requiring assistance, it might not have been possible to specifically identify customers with these characteristics.

Using data to adapt systems and processes

Data and trend analysis can provide extremely useful early insights into complaints management and where changes might be required. Once identified, firms can adapt systems and approaches ahead of these becoming larger more systemic issues.

As noted in Section 6.1 above, the collection of data around non-compliant CMC practices should also be helpful, as well as the collecting of data around specific complaint points that re-occur.

FLA Covid-19 related Guidance

The FLA has produced Guidance in specific areas which may be helpful when looking at industry good practice during the coronavirus. These include:

- [COVID-19 guidance for vehicle collection, delivery, distribution, storage and technical services](#)
- [Conducting vehicle repossessions during the COVID-19 pandemic](#)
- [Guidance on COVID-19 and the movement of vehicles](#)

8. How can the FLA support you?

FLA Website (COVID-19 Updates)

The FLA has set up a dedicated [Coronavirus \(COVID-19\) – Updates](#) page on the FLA website (member login required). This is a growing resource that provides members with the latest news on COVID-19 from the regulators, Ombudsman and Government and from three key perspectives – regulatory, economic and political, with FLA commentary highlighting the main issues and wider implications for our markets. We encourage you to regularly visit the page for updates.

Complaints guidance

Alongside the COVID-19 Complaints Toolkit, the FLA has also developed the following guidance related to CMC activity within motor finance which has led to FOS complaints.

FLA Motor finance guidance: managing CMC complaints on motor finance commissions

Since September 2019, motor finance members have begun to receive template complaints from a number of claims management companies (CMCs) and from law firms, alleging unfair commission practices, unaffordable lending and unfair relationships, and in some cases making pre-complaint subject access requests. A small number of these complaints have now reached the Financial Ombudsman Service (FOS), although no adjudications have yet been made.

In January 2020 FLA outlined what these complaints are about and suggested lines that members might take to defend the cases effectively. A copy of this guidance can be found [here](#).

The FLA welcomes member input on further guidance that may be useful to firms. You can find our contact details below.

Complaint handling training

The FLA offers training courses on effective complaint handling and has developed a new series of case study-led strategy courses for FOS complaints management. The courses focus

on strategies that firms can use to engage positively and constructively with FOS on adjudications. More information on all the upcoming complaint handling courses can be found [here](#).

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