Consultation Response:

FCA Mortgages tailored support draft guidance

Response by the Money Advice Trust

Date: March 2021

Contents

Introduction

About the Money Advice Trust

The Money Advice Trust is a charity founded in 1991 to help people across the UK tackle their debts and manage their money with confidence.

The Trust's main activities are giving advice, supporting advisers and improving the UK's money and debt environment.

In 2020, our National Debtline and Business Debtline advisers provided help to 161,560 people by phone and webchat, with 1.86 million visits to our advice websites.

In addition to these frontline services, our Wiseradviser service provides training to free-to-client advice organisations across the UK and in 2020 we delivered this free training to over 920 organisations.

We use the intelligence and insight gained from these activities to improve the UK's money and debt environment by contributing to policy developments and public debate around these issues.

Find out more at www.moneyadvicetrust.org

Public disclosure

Please note that we consent to public disclosure of this response.

Summary

We welcome the opportunity to comment on the FCA's draft mortgage guidance, which we note would allow firms to resume enforcing repossessions from 1st April 2021. Given that the government's roadmap out of lockdown[1] envisages continued Covid-19 restrictions until June at the earliest, we believe that a return to enforcement of repossessions before this point is premature on public health grounds.

We believe that this is a rare mis-step in the FCA's otherwise comprehensive and effective response to the challenges of Covid-19, and we would urge that the resumption of enforcement of repossessions from 1st April should be abandoned – in favour of extending the ban on physical repossession for at least a further three months, to June 2021, in line with the government's roadmap. At this point, the issue should be reviewed.

The FCA has previously stated that the reasoning for the current ban on repossessions:

"[which] takes account of the worsening coronavirus situation and the government's tighter coronavirus-related restrictions which mean that consumers could experience significant harm if forced to move home at this time as a result of repossession proceedings."[2]

We believe these conditions will remain in place far beyond 1st April. We would also reiterate the concerning findings in the FCA's own Financial Lives survey update[3] which looked at the impact of the coronavirus pandemic and how this is affecting people, including the following.

- ✓ *"There are now 27.7 million adults in the UK with characteristics of vulnerability such as poor health, low financial resilience or recent negative life events such as redundancy or a reduction in work hours. Having one of these characteristics means that these consumers are at greater risk of harm.*

- ✓ *The number of consumers with low financial resilience – meaning over-indebtedness or with low levels of savings or low or erratic earnings – has grown from 10.7 million to 14.2 million.*

- ✓ *One in three (30% or 15.9m) adults said they expect their household income to fall during the next six months, while 25% (13.2m) expected to struggle to make ends meet."*

In this challenging context, rightly highlighted by the FCA's own, invaluable, Financial Lives survey, we do not agree that this is the right time for relaxing rules on physical evictions in the pandemic given the likelihood of consumer harm if people are forced to move home or become homeless as a result of mortgage repossession.

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[1] https://www.gov.uk/government/publications/covid-19-response-spring-2021/covid-19-response-spring-2021-summary
[2] Finalised Guidance: Mortgages and coronavirus: updated Tailored Support Guidance for firms | FCA
[3] FCA Financial Lives Executive Summary here.

Our detailed response

Resumption of physical repossessions on 1st April 2021

We have been generally supportive of the FCA's approach to protecting vulnerable consumers from the effects of Covid related mortgage debt, which has been a comprehensive, thoughtful and effective response to the pandemic. We believe that the FCA has enacted farsighted, compassionate and effective measures, recognising that people are falling into mortgage and consumer credit debt through no fault of their own, but due to circumstances beyond their control as a result of this global pandemic.

We are disappointed, however, by the FCA's proposals to allow mortgage firms to enforce repossession orders by way of a warrant of possession. We note that guidance has already been relaxed to allow firms to seek a possession order in January 2021. It is now being further diluted to allow actual physical eviction from a property to take place.

> *"7.2 Before 1 April 2021, a firm should not absent exceptional circumstances (such as a customer requesting that the proceedings continue) enforce repossession and should not seek, or enforce, a warrant for possession or a warrant of restitution. But firms may commence or recommence and continue repossession proceedings, up to and including obtaining a possession order, as long as they act in accordance with this guidance, MCOB 13, and applicable pre-action protocols."*
>
> *"7.3 From 1 April 2021,* ***subject to any relevant government restrictions on repossessions, firms may enforce repossession as long as they act in accordance with this guidance,*** *MCOB 13 and relevant regulatory and legislative requirements. There is no 'one-size-fits-all' approach to how long firms should offer forbearance before starting a court process but action to seek possession should be a last resort and not be started unless all other reasonable attempts to resolve the position have failed."*

We can see no justification for the FCA to allow firms to take action to evict mortgage holders from their homes at this point, while the UK is still in the midst of Covid-19. This action will allow firms to appoint enforcement agents to physically remove families with children and other vulnerable households from their homes whilst the pandemic is still going on, social distancing is still legally required, and whilst we have not yet fully emerged from lockdown.

Despite the caveats in the guidance about possession being a last resort, and that circumstances should be taken into account, this will not offer the same level of protection as a prohibition that is effective across the board. We fear that this action will result in physical homelessness for individuals and families during the pandemic.

The FCA should reconsider these changes, which will lead to a worrying “cliff edge” in protection whereby lenders have the possession orders in place and are all permitted to apply to court for warrants of possession from April 2021.

The government’s roadmap for the release from lockdown includes dates that are far from certain as a cautious line has been taken. However, the Chancellor has extended furlough until the end of September to reflect the likelihood that incomes and jobs will continue to be affected by the pandemic until then. This means that households may well be struggling with an uncertain or fluctuating income at least till that point. It would seem to us to be putting vulnerable households at potential risk to relax the repossession rules at this stage.

We believe that the FCA should revert to the rules set out in the guidance shown in point 7.2 above, which was in place before April 2021. Whilst the FCA may not want to go as far as extending these rules preventing physical eviction until the end of September at this point, potentially the FCA could extend the repossession restrictions for another three months and then review the lockdown roadmap position at that point.

The role of lenders in assessing ‘risk of harm from coronavirus’

We further note that the draft guidance states:

> *“7.5 When considering whether it is fair and reasonable to enforce repossession in a particular case, a firm should consider, and take account of, whether there are any circumstances that may mean a customer, or a member of their household, is at greater risk of harm from coronavirus if they are required to vacate the property. Where the firm is aware of such risks, repossession should not be enforced until those risks have passed or can be appropriately managed. For example, firms should not require customers to vacate the property at a time when they, or a member of their household, are required to self-isolate.”*

We are concerned that the FCA has not considered the practical effects of implementing this guidance could have on public health grounds. In particular, we do not believe that it should be down to individual lenders to weigh up the health risk to their borrowers before deciding to evict them from their homes. We would question whether or how a firm, court or enforcement agent be able to establish who is at “greater risk of harm” and when the “risk of harm” is at an acceptable level - no mortgage holder is going to be in a position to safeguard their health and that of their families if they are rendered homeless in a pandemic.

In summary, we very much hope the FCA will reconsider their approach on the grounds of public health and reinstate the ban on physical repossession to protect the vulnerable at this stage in the pandemic.

Further measures to protect mortgage borrowers

As we have suggested before, we would urge the FCA to use this time period to address longer-term issues relating to how to support people falling into mortgage arrears as a result of the pandemic, and those whose existing debt problems have got worse.

For example, we suggest the FCA considers whether waiving or reducing interest should be applicable across all mortgage products, and not only applicable in some individual cases at the discretion of lenders. We are concerned that mortgage payments will increase to an unmanageable amount as a result of payment deferrals where interest has continued to accumulate. We would like to see the FCA consider whether the new monthly payments on mortgages including the accrued interest will be sustainable and affordable for borrowers in certain circumstances in the long run. A different approach to waiving or reducing interest would be beneficial in some cases in allowing people to stay in their homes.

Finally, in previous consultation responses we suggested the following two measures, which we believe should also be considered at this stage.

- ✓ **Introducing a further payment deferral for mortgage customers as a 'forbearance option of last resort'** in cases where the customer would otherwise face near-term repossession. This should only be available after all other forbearance options have been exhausted.

- ✓ **Making sure that consumers impacted by Covid-related debt and who are in temporary financial difficulty are protected from normal credit file reporting.** Whilst we appreciate that protection from normal credit reporting cannot continue indefinitely for everyone, we believe this specific protection is needed to ensure that, wherever possible, short-term financial difficulty that arises as a result of coronavirus does not have a long-term impact on individuals' financial situation.

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