MONEY ADVICE TRUST

BUSINESS DEBTLINE NATIONAL DEBTLINE WISER ADVISER

Consultation Response:

FCA Mortgages and coronavirus: Additional guidance for firms

Response by the Money Advice Trust

Date: September 2020

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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 2019, our National Debtline and Business Debtline advisers provided help to more than 199,400 people by phone and webchat, with 1.97 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 2019 we delivered this free training to over 981 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.

Executive summary

We welcome the FCA's clear recognition in its proposed guidance for mortgage lenders that some customers will continue to face financial difficulty and uncertainty beyond the 31st October. However, we are concerned that the proposals do not go far enough to protect many struggling households from repossession when the current guidance ends.

The FCA is right to emphasise the need for specific protections for these households, including preventing firms from repossessing in cases where mortgage arrears were incurred solely a result of coronavirus payment deferral(s). However, this guidance may not be enough to prevent serious mortgage difficulty for many. We are concerned that the current guidance does not do enough to prevent repossessions or protect those who may experience ongoing financial difficulty due to the impact of Covid-19.

We would urge the FCA to go further by:

- **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.

Ultimately, however, under the current system there is a limit to what the FCA and lenders can do, on their own, to prevent repossessions.

While the following issues are not matters for the FCA, in the interests of completeness we have included below our view on the steps the Government should take to improve the mortgage safety net in the wake of coronavirus.

- The Government should reform the Support for Mortgage Interest (SMI) scheme to protect new claimants of Universal Credit, by reducing the 39 week wait for payments to 13 weeks.

- The £200,000 mortgage cap under SMI should be increased (this was set in 2009 and not been increased since), and interest should be paid at the borrower's actual interest rate rather than the standard scheme interest rate, which is too low.

- The Universal Credit "zero earnings rule", which means that people do not receive any help with mortgage costs if they did any paid work or have any income from self-employment during a particular period, should be removed.

More fundamentally, the Government should consider the case for a new simplified Mortgage Rescue Scheme – learning the lessons from the scheme introduced after the 2008 financial crisis – to help minimise repossessions in the wake of coronavirus.

Comments on draft guidance

We have added comments below under the headings of the relevant sections of the guidance.

2 Mortgages and coronavirus

We have no comments to add on this section of the guidance.

3 Customers unable to resume full payments at the end of a payment deferral period

We are concerned that the new guidance leaves it to the discretion of the firm as to how they interpret the level of forbearance they should offer.

In particular, it is unclear what assistance a second-charge mortgage holder can expect to receive. The guidance in this section is silent on what firms should do in these circumstances, although it sets out at point 3.14 that they are not suitable for forbearance on a cohort basis. Similarly, we note in point 3.4, the guidance states that capitalisation for second-charge mortgage holders should only occur *"where they [firms] consider this to be appropriate after a full consideration of the customer's individual circumstances and with the customer's agreement".*

We are also concerned that the emphasis on the use of digital tools in this section (point 3.7) could potentially be harmful to some. Borrowers may be in vulnerable circumstances, which could mean that they are unable to provide comprehensive information on their circumstances via a digital method. **It is vital that firms work with individual customers to make sure they have filled in accurate and complete budgets – and offer a variety of channels in which customers can do so.**

3.7 Under both this guidance and MCOB 13 firms have flexibility and scope to tailor their approach to meet the challenge of many customers needing assistance at the same time. In particular, neither this guidance nor MCOB 13 impose prescriptive requirements about how a firm collects information about a customer's individual financial circumstances or how it ensures any forbearance option proposed is appropriate for that customer in light of their individual circumstances. Therefore, firms could use automation or digital tools to:

- *automate processes, including asking borrowers who cannot resume full payments to provide information on their circumstances, including income and expenditure*
- *offer a customer a forbearance option the firm has identified as appropriate to the customer's individual circumstances, and get the customer's agreement to it*
- *offer a customer a range of options that the firm has identified as appropriate to the customer's individual circumstances for the customer to choose from*

Furthermore, if a firm uses automation to offer a customer a forbearance option that the firm has "*identified as appropriate"* for that individual, this could easily be on the basis of incomplete or inadequate information. How will the customer know if this is suitable for them, or be able to work out what to say in response? They may not be aware of other options that have been discounted by the lender. As a result, they may feel compelled to accept the option given to them. We believe there should be further checks and balances in place so that firms do not offer options that are not suitable in these conditions.

Provision of short-term forbearance on a cohort basis

We are pleased that the FCA has agreed with this pragmatic approach and allowed firms to continue payment deferrals for up to 60 days rather than carry out a full assessment for certain groups of customers.

3.11 Firms may want to identify certain cohorts of customers coming to the end of payment deferrals under the June guidance, for whom a short-term period of forbearance is likely to be appropriate, rather than undertaking a full assessment of their individual circumstances straight away.

We agree that this might allow firms to assess people who are in the greatest need of individual assistance, such as people who are in debt, on reduced earnings or unemployed or have a short time left to pay their mortgage. However, this does not mean that there will be any adequate protections in place for these groups, who appear to be one step closer to being repossessed due to coronavirus, unless the FCA takes further action regarding repossession (see below).

When MCOB 13 applies to customers unable to resume payments

It is reassuring to see that under point 3.18 of the guidance, the FCA states firms should *"not repossess the property due to a payment shortfall where the shortfall is one arising purely as a result of a payment deferral under the June guidance."*

However, the guidance does not offer the same protection where a consumer had existing mortgage arrears for other reasons, as well as payment deferrals, or where further payment deferrals are granted after the June guidance expires.

As we have highlighted in our previous response to the Call for Input,[1] **we would like to see further protections put in place to ensure that there is "forbearance of last resort" for such groups.** In addition, section 7 of the guidance on repossessions does not repeat the crucial point about protections from repossession set out under point 3.18 above. We would expect to see this provision being echoed in the section on repossession so that this is crystal clear.

4 CRA Reporting

We are pleased to see that the FCA has set out a clear expectation that borrowers will not have their credit records affected by payment deferrals already taken out during the coronavirus outbreak.

4.3 We expect firms to resume normal reporting from the payment status that was 'frozen' at the start of the payment deferral period to preserve the benefit of having no worsening status reported during payment deferral periods.

It is however, disappointing to see the guidance stating that any further payment deferrals taken as a result of coronavirus will affect credit files in the normal way.

4.5 For all customers, we expect any further forms of support, including for example further full or partial payment deferrals offered as forbearance, to be reported to credit files in the usual manner.

As we said in our response[2] to the last Call for Input on ongoing support for consumers affected by coronavirus, we do not agree that normal credit reference agency reporting should resume. Whilst we appreciate that protection from normal credit reporting cannot continue indefinitely for everyone, **there should be specific consideration given to making sure that consumers impacted by Covid-related debt and who are in temporary financial difficulty are protected from normal credit file reporting.** We are concerned that, without this, there will be unexpected consequences on consumers and their ability to borrow in the future.

Although the guidance says that lenders should be clear about credit file implications of any support they offer their customers, this may not undo damage already done.

4.6 Firms should ensure that they are clear about the credit file implications of any forms of support offered to customers, including the rescheduling or refinancing of accounts.

Where consumers enter further payment deferrals – or other forbearance on Covid-related debts, such as rescheduling/rewriting existing agreements – there should be

[1] Money Advice Trust response to FCA Call for Input: Ongoing support for consumers affected by coronavirus, August 2020
[2] Money Advice Trust response to FCA Call for Input: Ongoing support for consumers affected by coronavirus, August 2020

some level of protection for their credit rating. This might vary according to the forbearance that is in place. **The overall aim should be to ensure that, wherever possible, short-term financial difficulty that arises as a result of coronavirus should not have a long-term impact on individuals' financial situation.**

5 Delivering effective forbearance in the current environment

We have not made comments on all the sub-sections in section 5 of the guidance. In general, this section emphasises the way in which firms should be flexible, use forbearance, treat customers fairly and *"support customers in a way that minimises avoidable financial distress, stress and anxiety during a period when many customers may be experiencing uncertainty and economic shocks due to coronavirus".*

However, it fails to address the point that firms can ultimately repossess borrowers for Covid-related arrears if they decide to do so. This guidance only tells lenders not to use repossession for a specific type of missing payment as set out at point 3.18, which states that lenders should: *"Not repossess the property due to a payment shortfall where the shortfall is one arising purely as a result of a payment deferral under the June guidance."*

This means that in our view, the guidance set out in section 5, although helpful, will have limited effect on preventing repossessions.

Considering a range of forbearance options

We are pleased to see the FCA setting out its expectations on firms in relation to forbearance and that firms should not take a "one size fits all" approach.

5.3 We expect firms to be flexible and employ a full range of short and long-term forbearance options to support their customers and minimise avoidable financial distress, stress and anxiety experienced by customers in financial difficulty. This may include short term arrangements under which the firm permits the customer to make no or reduced payments for a specified period.

It is of course vital that firms agree sustainable arrangements taking account of individual circumstances. We are pleased to see the recognition that many people are in an uncertain financial position and that firms should agree reduced payments or payment freezes as a short-term arrangement when circumstances are unclear.

5.15 This uncertainty may make it harder for a customer to commit to an arrangement to pay, and may mean it is appropriate to delay the use of long term solutions such as changing the type of the loan until a clearer picture emerges. This includes customers who have benefitted from payment deferrals under the June guidance. Where this is the *case, firms should offer short term arrangements under which the firm permits the customer to make no or reduced payments for a specified period to give them more time to get back on track. Firms should not pressure a customer to commit to a longer-term arrangement if it is clear that the customer's circumstances may materially change in the short-term.*

Second Charge Mortgages

We are very concerned that the section setting out requirements on firms in relation to second mortgages does not go far enough and needs strengthening. The FCA recognises that there is a *"particular risk of harm from the total debt escalating significantly when a customer defers payments or enters payment shortfall".*

The FCA goes on to suggest that firms should consider other forbearance options that are not in MCOB.

5.17 In such cases, it is particularly important that firms consider using a range of forbearance options beyond those listed in MCOB. These could include applying simple interest rather than compound to the deferred amounts, or any payment shortfall, or reducing the interest rate charged on these sums (in some cases to 0%). This, when combined with sustainable arrangements to pay, may prevent the balance from unfairly escalating and give borrowers more scope to effectively address any shortfall.

However, the FCA needs to put in place close supervision mechanisms for such firms to ensure that these options are utilised. As it stands, if firms fail to use additional forbearance options, there is little clear compulsion on them to do so or sanction for failure to do so. Unfortunately the FCA appears to be suggesting that, ultimately because of the nature of the product, people should expect to lose their homes.

Taking account of wider indebtedness

Whilst this is a welcome requirement on firms, we think it would be useful to include a reminder about referrals to sources of free debt advice at this point in the guidance.

Supporting vulnerable consumers

It is very helpful that lenders are reminded that *"firms should take particular care to ensure they respond to the needs of consumers with vulnerable characteristics at the greatest risk of harm".*

However, the guidance does not set out greater protections against repossession for people in vulnerable circumstances.

We would also reiterate the point made earlier in our response about the need to ensure there are multiple channels for consumers to get in contact with a firm to provide detail of their circumstances and to discuss their options – an over-reliance on solely digital channels could create barriers for vulnerable consumers.

6 Interaction with other MCOB provisions

We have no comments to add on this section of the guidance.

7 Repossessions

We are disappointed to see that the FCA has not extended the freeze on repossession action in this guidance except in the limited circumstances set out in 3.18 (where the only arrears someone has are due to a coronavirus payment deferral already taken out before 31st October).

As mentioned above, this does not protect those who had existing mortgage arrears or where people continue to experience Covid-related financial difficulty and further payment deferrals are granted after the June guidance expires. It is difficult to see how repossession can be a good outcome for people in mortgage arrears as a result of coronavirus.

The FCA can help to avoid repossessions in the near future. Given that a mortgage is a long term agreement, this enables lenders to build in some flexibility in its repayment terms without having a drastic effect on monthly payments for the borrower.

As we suggested in our response to the last call for input on ongoing support for consumers affected by coronavirus, we believe that **the FCA should introduce 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. **We believe this additional measure for mortgage customers is required to help prevent a wave of near-term repossessions as the economic consequences of coronavirus unfold.**

We are pleased to see that the FCA has made it clear to lenders that *"possession action should not be started until all other options have been exhausted".* However, we do not feel this goes far enough.

As we said, whilst far from the full solution, a further payment deferral in these circumstances will help Covid-impacted mortgage customers who are in continued but temporary financial difficulty, and for others, help bridge the gap between falling into difficulty and accessing Support for Mortgage Interest. In tandem with this measure, the FCA will need to change MCOB and its related mortgage forbearance guidance to ensure firms do not argue that it is in the best interests of their customers to be repossessed.

We would like to see the FCA changing the rules to ensure that an assessment of the consumer's "best interests" does not result in a decision that their best interests would be to repossess their property.

As we have said above, section 7 of the guidance on repossessions does not repeat the crucial point about protections from repossession set out under point 3.18 – which states that firms should "n*ot repossess the property due to a payment shortfall where the shortfall is one arising purely as a result of a payment deferral under the June guidance*." We would expect to see this provision being echoed in the section on repossession so that this is crystal clear.

8 Debt help and money guidance

We are very pleased to see that the FCA has included debt help as a specific section in the guidance. We think this section sets out the FCA expectations on how firms should be proactive about identifying appropriate referrals clearly.

We welcome the requirement on firms to refer to *"refer the customer to a not-for-profit debt advice body"*. This strengthens the message so firms are required to make a referral rather than just that they may consider it. We would expect the FCA to require all authorized firms to **make sure this information accompanies all their communications to customers and is provided in a prominent position on relevant pages on their websites.**

We also welcome the recognition that small businesses will be in need of specialist debt advice, when the guidance says firms should consider *"whether the customer would benefit from a specialist source of debt advice (eg where the customer is self-employed, making them aware of business debt advice providers)."*

However, **we would value the guidance spelling out that this means for practical purposes a referral to Business Debtline as the source of specialist small business debt advice.** Otherwise, it is unclear how lenders will know where to refer their self-employed customers.

For more information on our response, please contact:

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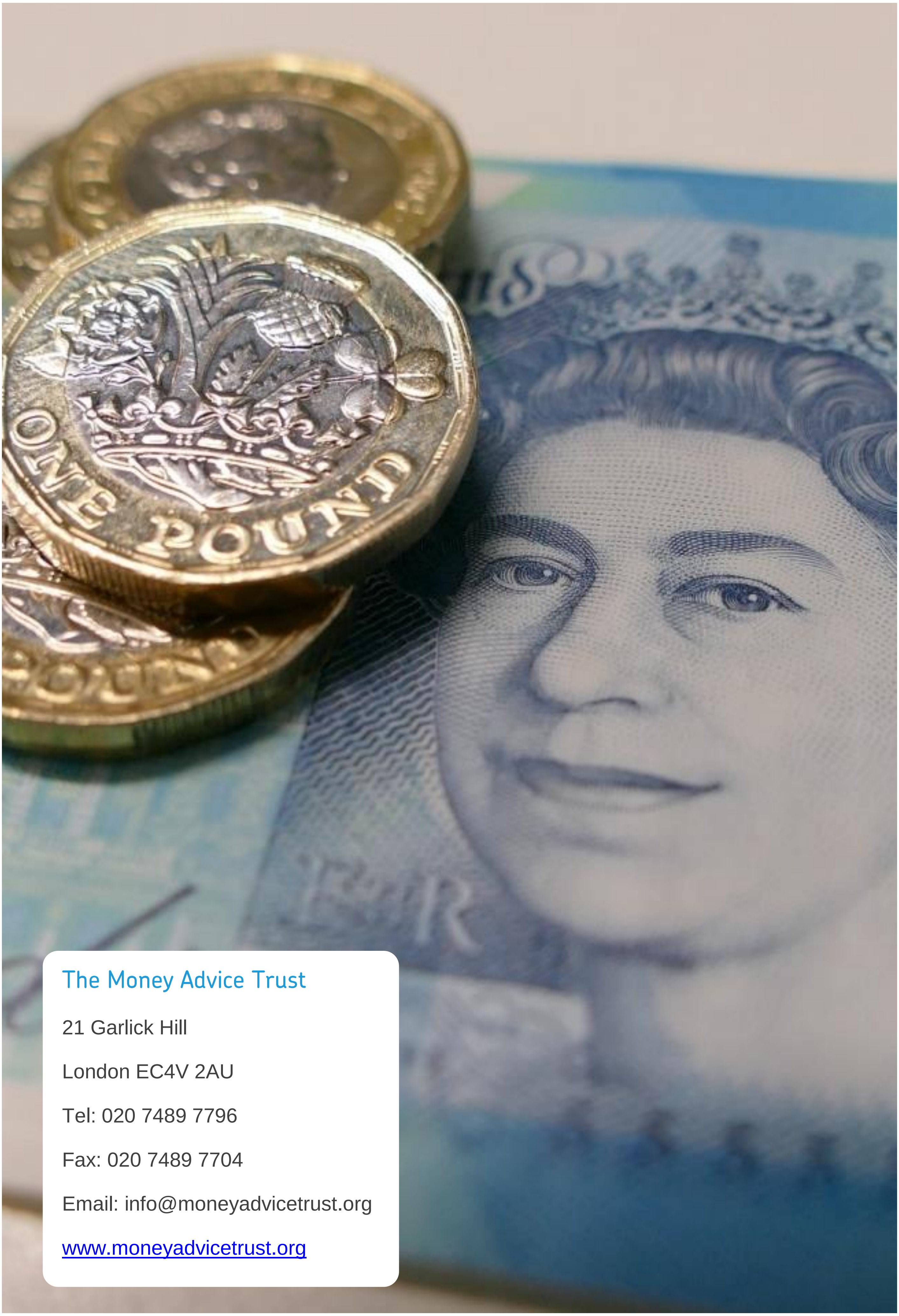

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