

MONEY ADVICE TRUST

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Consultation Response:

FCA update to guidance on mortgages and consumer credit repossessions

Response by the Money Advice Trust

Date: January 2021

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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.

We run National Debtline and Business Debtline, and our Wiseradviser service provides training to free-to-client advice organisations across the UK.

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.

Introductory comment

We welcome the announcement from the FCA of proposed measures to continue to support consumers with mortgages through the impact of the Covid-19 outbreak.

- ✓ We commend the FCA for extending the protections from enforcement of mortgage possession until 1st April 2021.
- ✓ 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.
- ✓ We are very concerned with the proposal to amend the guidance to allow firms to terminate regulated agreements and repossess vehicles from 31 January 2021. We would like to see the current protections against repossession under the guidance continue.
- ✓ We do not support this proposal which seems out of step with the protections afforded under the FCA guidance elsewhere, for mortgage repossessions and consumer credit. It also appears to be a public health protection risk to allow such repossessions to take place amidst the ongoing pandemic.

Comments on the draft guidance

Mortgages and Coronavirus: Tailored Support Guidance

We welcome the amendments to the mortgages and Coronavirus: tailored support guidance. We commend the FCA for extending the protections from enforcement of mortgage possession until 1st April 2021.

“7.2 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 before 1 April 2021.”

We would expect a review of this extension to take place in good time before that deadline, depending upon the Coronavirus pandemic situation at that point.

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.

We note that the section on repossessions does not prevent a firm from starting repossession proceedings and obtaining a possession order. The pause only applies to enforcement of that order.

“7.3 But firms may commence or re-commence 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.”

This could 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 (or a later date if the protections are extended again). We would like to see further thought given to how this scenario could be prevented or its effects mitigated.

The FCA has given broad scope for firms to interpret this guidance. We would welcome reassurance that the regulator is able to dedicate sufficient resources to its supervision responsibilities to ensure that firms interpret and implement the guidance in the best interests of consumers.

We note that the majority of the guidance content remains the same as the November 2020 version. In previous consultation responses we suggested the following two measures:

- **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.

As we have argued previously, on a broader point, we would urge the FCA to use its influence with both government and other regulators to ensure that there is a consistent approach to all debts across sectors. We would suggest that unless protections against recovery and enforcement are put in place for people who rent their homes and for those who fall behind on essential bills such as council tax, then the FCA’s plans to protect consumers from the effects of the Covid emergency will not be fully effective. Apart from mortgages, credit payments to the financial sector will be much less likely to be paid if people are unable to pay essential household bills such as rent and council tax.

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.

It remains our view that, 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.

Consumer credit and Coronavirus: Tailored Support Guidance

We note that the tailored support guidance has only been amended in relation to the section on repossession of hire purchase, conditional sale and consumer hire goods only. We also note that the repossession guidance applies whether consumers are receiving support by way of payment deferrals or if these have been exhausted and the tailored support guidance applies instead.

We are concerned with the proposal to amend the guidance to allow firms to terminate regulated agreements and repossess vehicles from 31 January 2021.

“6.5. From 31 January 2021, firms may terminate regulated agreements and repossess goods or vehicles, but only as a last resort, and in accordance with all relevant government public health guidelines and regulations (including social distancing and shielding) when taking possession.”

We do not support this proposal which seems out of step with the protections afforded under the FCA guidance elsewhere, for mortgage repossessions and consumer credit. It also appears to be a public health protection risk to allow such repossessions to take place in a pandemic.

We note the caveat in the guidance that this should be done *“only as a last resort”*. However, we do not think it is sufficient to leave this to the discretion of firms. We would expect further definition in the guidance as to what should constitute a “last resort” and for firms to be required to demonstrate how they have come to that conclusion.

We are surprised to see the reference under 6.7 that:

“firms should take into account the financial impact of delaying repossession, including asset depreciation.....”

We would have thought that firms should be encouraged to be more concerned with public health, the potential vulnerability of their customers, and their need to retain their vehicles amidst the ongoing pandemic. The potential for asset depreciation should surely be a secondary concern under the circumstances. We would like to see the current protections against repossession under the guidance continue. We do not agree that the change is justified under the current pandemic emergency.

The FCA should bear in mind the nature of hire purchase agreements which means that the firm has a great deal of power in any negotiations given the threat of terminating the agreement and repossession of a vehicle that might be vital to that customer and their household.

We note that there is nothing in the section six of the guidance relating to voluntary termination beyond a mention in section 6.3 as an example of an “*exceptional circumstances*” where repossession can continue. We have often come across cases where the right of the customer to invoke voluntary termination of an agreement under section 99 of the Consumer Credit Act 1974 is not highlighted by the lender. This can limit a consumer’s outstanding liability to 50% of the total amount payable under the agreement. We would like to see a section in the guidance requiring the lender to explore this option with their customer where it may be applicable as an alternative.

Finally, as we have said in all our consultation responses on the FCA’s Covid-related temporary relief measures, we remain of the view that the guidance should require interest to be waived. Otherwise consumers will be required to resume repayments with a higher balance plus the rolled-up interest will have been added to their accounts.

For more information on our response, please contact:

Meg van Rooyen, Policy Manager
meg.vanrooyen@moneyadvicetrust.org
0121 410 6260



The Money Advice Trust

21 Garlick Hill

London EC4V 2AU

Tel: 020 7489 7796

Fax: 020 7489 7704

Email: info@moneyadvicetrust.org

www.moneyadvicetrust.org