MONEY ADVICE TRUST

Consultation Response:

FCA Guidance for firms supporting their existing mortgage borrowers impacted by the rising cost of living

Response by the Money Advice Trust

Date: December 2022

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 2021, our National Debtline and Business Debtline advisers provided help to over 170,400 people by phone, webchat and our digital advice tool with 1.63 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 2021 we delivered this free training to more than 1,000 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.

Introductory comment

We welcome the opportunity to comment on the FCA Guidance for firms supporting their existing mortgage borrowers impacted by the rising cost of living and rising interest rates in particular. Our thoughts are set out below.

Firstly, we would highlight that we are unclear what the purpose of the guidance is beyond some clarification for firms. We are concerned that, between this guidance, the Mortgages and Coronavirus: Tailored Support Guidance March 2021, MCOB and Dear CEO letter, it is confusing to consumers and advisers to establish what lenders should be offering and how they should be treating people.

In relative terms, we are at the start of this period of higher interest rates. We note the recent forecast by the Bank of England that monthly payments on around 4 million owner- occupied mortgages are expected to increase over the next year, and that people coming off fixed rate deals in 2023 face an average monthly increase of £250. This is a significant amount of money for people to find at a time in which they are facing higher costs across the board – including (but not limited to) energy bills. With this in mind, we welcome the FCA being proactive in setting out guidance to lenders at an early stage.

However, given the potential scale of increases borrowers will be experiencing, we are concerned that this guidance does not go far enough to protect borrowers in these circumstances, particularly in relation to the capitalisation of arrears and variation to interest-only mortgages for borrowers in arrears.

We would like to see a set of strengthened principles that the FCA requires firms to follow when people are struggling to pay their mortgages due to mortgage interest rate increases and cost of living rises. This should be more directive in status than the current guidance. We see a strong likelihood of consumer harm if people are forced to move home or become homeless as a result of mortgage repossession. FCA rules and guidance for lenders should recognise that people are falling into payment difficulties and ultimately mortgage arrears through no fault of their own, but due to circumstances beyond their control. We fear that unless further action is taken, we could see an increase in physical homelessness for individuals and families.

Borrowers are likely to be stressed and worried about their finances, and may lack the confidence to contact their lender themselves. These borrowers are at risk of getting into arrears and falling through the cracks in protection. We would like to see a requirement by the FCA on lenders to be proactive in getting in touch with their borrowers, particularly where they are coming up to the end of their fixed term. Lenders should be clear about the options available to borrowers in their communications and make it as easy as possible for forbearance measures to be put in place with minimum contact.

The FCA should also highlight the importance of lenders offering longer-term periods of forbearance than is standard where this is needed by, and is appropriate for, the customer. For example, we have previously called for a further payment deferral option 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.

Finally, both the FCA and the Government will need to monitor the situation carefully and be prepared to take further steps – including from a public policy perspective – if needed to help minimise repossessions and support borrowers during this difficult economic period.

Comments on the draft guidance

Complex sources of guidance

We note that the guidance should be read in conjunction with the Mortgages and Coronavirus: Tailored Support Guidance March 2021.[1] We would suggest that the FCA looks at this guidance again with a view to updating the references to Coronavirus and to ensure it is completely clear that this guidance applies to how lenders should treat borrowers impacted by the cost of living.

We feel it could be very confusing for consumers and advisers trying to work out if the guidance applies to them or is only in relation to the consequences of Covid-19. Furthermore, it makes it very difficult to assess how MCOB, the tailored support guidance and this new guidance for firms should work together. This is made even more complex by the Dear CEO letter[2] from June 2022 which must also be taken into account.

We would like to see the FCA consolidate and simplify all these sources so that it is more straightforward to see how these different sources of guidance and rules work together and to simplify these wherever possible.

Credit rating

The guidance does not contain sufficient information on what the effect will be on borrowers' credit files if they take up any of the proposed forbearance arrangements. This is limited to the following statement.

"Firms should ensure they are clear in their communications about the credit file implications of any forms of support they offer customers, including rescheduling or refinancing of accounts (TSG para 4.7)."

We would expect clearer and stronger guidance on what the FCA expects lenders to do regarding information recorded on credit files as a result of taking up any of these options. We do not think it is sufficient that guidance is limited to ensuring firms are clear about credit file implications. It is an established point that consumers are very reluctant to talk to their lenders in case their credit file is damaged in some way. This can be particularly the case when it comes to mortgages, as consumers may be concerned about the impact of their credit rating on future re-mortgaging options. The FCA should make it clear to lenders what can be recorded on a credit file in each scenario so that there is a common approach that can be shared to alleviate consumer concerns.

[1] Finalised Guidance: Mortgages and Coronavirus Support Guidance (fca.org.uk)
[2] The rising cost of living – acting now to support consumers (fca.org.uk)

Interest rate switches

"Many firms offer borrowers who are up to date with payments the ability to switch their interest rate."

We would like to see the guidance address the issue of borrowers who are in arrears who wish to switch interest rates from variable or fixed interest rates to new lower rates. We cannot see a reason for preventing a borrower in arrears from switching to a lower interest rate. Indeed, where a borrower is in arrears, it is even more vital that they do not have to pay a higher interest rate that they cannot afford. We would like to see this provision strengthened to encompass borrowers in arrears to ensure that borrowers are being treated fairly.

"To determine whether this change would be material to affordability (and therefore whether the requirement to undertake an affordability assessment will apply) firms can compare the proposed new rate to the rate the customer would pay if not for the change."

We would expect firms to be required to compare the proposed new rate to the rate the customer would pay otherwise such as the standard variable rate. It does not seem reasonable to leave this as an option for firms in such circumstances.

Variation to interest-only

"A firm may agree to vary a contract from a repayment mortgage to an interest-only mortgage (permanently or temporarily) if it has evidence that the customer will have in place a clearly understood and credible repayment strategy."

This element of the guidance appears to be severely limited in scope. We would like to see the guidance strengthened to allow customers to be switched to an interest-only mortgage for a temporary period with no affordability assessment required. This should be allowed given the extremely unexpected nature of the interest-rate rises which could not have been foreseen by borrowers. A temporary interest-only period of perhaps two years, with a review after this time, could give the borrower time to develop a repayment strategy. If interest-only payments will have the effect of preventing arrears from building up during this period, and preventing repossession, we believe the FCA should be considering this an emergency response.

Lenders should of course be required to set up forbearance arrangements for any other unsecured credit as a first step.

Capitalisation of arrears

One element of potential forbearance is not set out in the draft guidance and we would like to see this reconsidered.

MCOB[3] 13.3.4AR (1) (d) states that a firm must consider whether it is appropriate to:

"(d) treat the payment shortfall as if it was part of the original amount provided (but a firm must not automatically capitalise a payment shortfall where the impact would be material);"

MCOB 13.3.4D says:

"In the FCA's view, in order to comply with Principle 6, firms should not agree to capitalise a payment shortfall save where no other option is realistically available to assist the customer."

We have always had concerns about the FCA approach to capitalisation of mortgage arrears as set out in the original MCOB rules above. People may have substantial equity in their home, and the new payment be much more affordable once arrears are capitalised. We would like to see the FCA change their rules to make it easier to allow capitalisation of arrears even "*where the impact would be material*", where this might help borrowers stay in their home. This could help with the impact of the cost-of-living crisis and help prevent repossession.

We have no additional comments to add at this stage.

For more information on our response, please contact:

Meg van Rooyen, Policy Lead

meg.vanrooyen@moneyadvicetrust.org

07881 105 045

[3] https://www.handbook.fca.org.uk/handbook/MCOB/13/3.pdf

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