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Consultation Response:

FCA Strengthening protections for borrowers in financial difficulty

Response by the Money Advice Trust

Date: July 2023

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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 2022, our National Debtline and Business Debtline advisers provided help to 140,980 people by phone, webchat and our digital advice tool with 1.87 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 2022 we delivered this free training to 2,780 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 are very concerned by the likelihood of substantial consumer harm if people are forced to move home or become homeless as a result of mortgage repossession. We very much supported the FCA's approach to protecting vulnerable consumers during Covid. We are pleased to see that the FCA continues to recognise 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 rising interest rates and the high cost-of-living.

We agree with the proposed changes put forward in this consultation, but do not think they go far enough as they stand.

It is vital that lenders offer longer-term periods of forbearance than is standard where this is needed by, and is appropriate for, the customer in the current situation.

Payment deferrals for people struggling with payments

One of the advantages of the Covid tailored support guidance was clear simple messaging to consumers about the help available by way of payment deferrals for mortgage lending. The changes to MCOB do not have the same impact as a temporary scheme to allow struggling borrowers an easy-access period of reduced mortgage payments or temporary freeze on payments. **We would like to see the FCA and government develop an emergency package of support. This should consist of a temporary payment deferral scheme, to include partial payment deferrals, targeted at borrowers struggling to pay during the cost-of-living crisis whilst they are affected by the impact of high and rising mortgage interest rates.** This would not be the same as the Covid-era payment deferral, which was offered to all mortgage borrowers regardless of circumstances and which, in some cases, may be taken out prematurely or unnecessarily.

Clear messaging by lenders that this option is available to borrowers in financial difficulty should be promoted by lenders, and included in the suite of options on websites and communications. Again, there should be no impact on credit scores. The outstanding payments should be capitalised after the payment deferral.

Extending the interest only payment period

We welcome the commitment in the Mortgage Charter¹ to a switch to interest only payments for six months without an affordability check. However, we are concerned that this may not be a sufficient time period. 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.

¹ [Mortgage Charter - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

Encouraging all lenders to follow Mortgage Charter rules

While we welcome the Mortgage Charter, we note that there are lenders representing around 10% of the market² who have not signed up to this. This is of course disappointing and means we have a situation where the new MCOB rules put in place to implement the Mortgage Charter are not mandatory. The Mortgage Charter: enabling provisions³ state:

“2.5 These rules are exemptions from responsible lending requirements. They are not mandatory, but any lender may use them, subject to the limitations set out below. Lenders who have signed up to the Mortgage Charter may make use of them to fulfil those commitments.”

This leads to a situation that may be confusing for borrowers, and means some will get a different level of treatment and access to support and forbearance purely as a result of who their lender is. We would encourage the FCA to work with the Government to get all lenders signed up to the Mortgage Charter (at which case the MCOB rules should be updated to be mandatory). Alternatively, the FCA and Government could decide to make these rules mandatory in any case – so that all lenders must abide by them.

Support for people already in mortgage arrears

We would also like to see support for people already in mortgage arrears, who should also be allowed to switch to interest only, or extend their mortgage term.

The Charter is not clear with regards the commitment that states:

“From 26th June, a borrower will not be forced to leave their home without their consent unless in exceptional circumstances, in less than a year from their first missed payment.”

It can often take 12 months from the date of a missed payment until a mortgage repossession order and warrant of eviction through the courts. As presented, if there is a mortgage possession order in place, and someone has been in arrears for 12 months, the repossession can go ahead. This measure would offer greater protection to people struggling with mortgage arrears, if there was a commitment not to seek mortgage possession action for at least 12 months from the first missed payment. We would like to see the FCA and government work to increase protections in this area. At the very least, FCA rules and guidance should make it very clear what this commitment means, and ensure that lenders display this message prominently on their websites.

² <https://www.gov.uk/government/publications/mortgage-charter/mortgage-charter#lenders-who-have-signed-up-to-this-charter>

³ <https://www.fca.org.uk/publications/policy-statements/ps23-8-mortgage-charter-enabling-provisions>

Monitoring and future action

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. For example, this might include in the future exploring options further interventions, such as 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 rising interest rates.

Responses to individual questions

Question 1: Do you agree with our proposed changes to the scope of: a. CONC 5 & 7? b. MCOB 13?

We agree with the proposed changes to the scope of CONC 5 and 7. It is vital that firms should provide support to customers who approach them before they miss a payment. Our experience at National Debtline and Business Debtline indicates that early intervention is key to better outcomes for our clients as there are likely to be a wider range of options available to them at an early stage.

We also agree with the proposed changes to the MCOB rules to expand the scope of MCOB 13.3.1R as indicated. **It is vital that firms don't just "consider" support, but actually do provide support.** We do not want to see lenders discarding all options once they have considered them, so that all that is left is repossession.

However, 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.

Question 2: Do you agree with our proposals to include a new Handbook rule and associated Handbook guidance, covering the reviews of the effectiveness of policies and procedures: a. in CONC 7? b. in MCOB 13?

We very much agree with the proposals to include a new handbook rule and guidance to ensure that firms monitor the effectiveness of policies and procedures in financial difficulties.

Question 3: Do you have any comments on our updated references to the fair treatment of vulnerable customers: a. for CONC 7? b. for MCOB 13?

The proposals seem eminently sensible as the FCA approach to vulnerable customers has moved on since CONC and MCOB were put in place. It makes sense to reference the "*Guidance for firms on the fair treatment of vulnerable customers*" in CONC 7 and MCOB 13 as suggested.

Question 4: Do you agree with our proposals to add to the existing list of forbearance options at: a. CONC 7.3.5G & CONC 5D 3.3(4)G? b. MCOB 13.3.4AR?

We support the proposals to add to the forbearance option examples suggested for credit, overdrafts in CONC and mortgages in MCOB. It will be important to continue to emphasise that these options do not constitute an exhaustive list.

However, we would like to see the rules on mortgage forbearance be revised in particular. Point 3.17 in the paper says:

“We expect firms to consider a range of forbearance options and take account of customers’ individual circumstances when determining and providing the appropriate support.”

We would like to see an expectation on firms to not only consider a range of forbearance options but to be required to implement forbearance options.

We have raised concerns with the FCA, that all the forbearance options might be considered and each one dismissed as not “appropriate” in turn by mortgage lenders. This gives the appearance of having followed the rules by “considering” the options but results in a poor outcome for customers who find that the only option still being considered is repossession, as forbearance options have all been discarded. We want to see an option being offered to borrowers in every case, even if this is not technically a forbearance option, as long as it helps them to stay in their homes.

It is also vital that each forbearance option is itemised by the mortgage lender and the reason for its dismissal is recorded to demonstrate why the option was disregarded.

Question 5: Do you agree with our proposals on the transparency and accessibility of forbearance options: a. to CONC at CONC 7.3.13A, CONC 5D 3.9G and CONC 5D 3.3G(7)? b. to MCOB 13.3.4C?

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. We very much agree that the range of options available should be set out clearly in a prominent location on a firm’s website. For mortgages we are again concerned that the paper suggests this is limited to what that particular firm is happy to “consider”.

“3.26 For mortgages, we propose the range of options to help customers that a firm will consider should be set out clearly, including in a prominent location on the firm’s website.”

We do not see why firms should be allowed to limit forbearance options they make available to customers, as they should be following MCOB and offering all forbearance options.

Question 6: Do you agree with our proposals relating to effective customer engagement and communication around money guidance and debt advice: a. in CONC 7.3.7A? b. in MCOB 13.3.2AR?

We welcome any measures that might result in effective signposting and referrals to free sources of impartial debt advice. The requirement on mortgage firms to proactively engage with individual customers on how debt advice could help them is to be welcomed.

Question 7: Do you agree with our proposals to include further Handbook provisions on our expectations relating to customer engagement and communication: a. in CONC 7.3.13A and CONC 5D? b. in MCOB 13.3.4AR(2)?

We support the intention to include guidance on obligations for firms to communicate with customers by providing *“timely, clear and understandable information”*.

We are pleased to see the intention to restate in CONC 5 D that firms should not suspend or remove overdraft facilities or reduce credit limits if this will cause financial hardship.

We are somewhat confused about the proposed amendment to the mortgage information which must now include the impact on the overall balance and implications for the customer’s credit file. We would like to understand how this will tie in with the government Mortgage Charter commitments and FCA enabling rules.

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.

We would suggest looking at the meaning of the word “adequate” in MCOB as regards information the lender must provide. This does not seem to be a very good term to use as it seems to us to imply the bare minimum. The term does not seem to chime with the requirement to provide *“timely, clear and understandable information”*.

Question 8: Do you have any comments on these consequential amendments: a. in CONC? b. in MCOB?

We do not have any comments on the consequential amendments suggested in CONC or MCOB.

Question 9: Do you agree with our proposals to introduce requirements on escalating balances where a firm has put in place a sustainable repayment arrangement as a forbearance measure and the customer is meeting the terms of that arrangement?

We do not think these proposals go far enough. It is not sufficient for lenders to “suspend, reduce, waive or cancel” interest and charges so that the level of debt does not rise whilst a payment arrangement is in place. We would strongly argue that this does not provide a good outcome for the consumer in such a case. If the person in financial difficulties keeps up payments under an affordable payment arrangement, it is surely beneficial for them to actually reduce the balance. It would be a strong disincentive to keep paying, only to see the balance staying the same or slightly reducing. It sounds as if the intention is for the balance merely “not to rise” despite the consumer’s best efforts to pay back their debts. In such cases their best efforts will have made no or little difference.

We would suggest the proposals should require firms to suspend interest altogether to ensure payments made actually reduce the balance outstanding and provide an incentive for someone in debt and potentially vulnerable circumstances to keep paying.

Question 10: Do you agree with our proposals on introducing guidance to help firms determine necessary and reasonable charges?

We support this proposal as far as it goes. We are not surprised that FCA supervision work has found similar firms charging different fees and charges for the same activities. We would like to see interest and charges frozen when people are in financial difficulties rather than guidance on what is a “reasonable” level of costs. This would again, help to encourage people to engage with their creditors and agree a plan to repay the debt without the balance staying the same or growing.

Question 11: Do you agree with our proposals on sustainable repayment arrangements?

We very much support the proposals on sustainable repayment arrangements. It is alarming to find that the FCA supervisory work found firms agreeing repayment arrangements that left consumers with no disposable income. It is vital that people are able to pay their household bills and essential living costs otherwise the arrangement to repay their mortgage arrears will not be sustainable and is more likely to collapse.

Any arrangement that is based upon the necessity of falling behind on other essential household bills, using credit to get by or cutting back on housekeeping is likely to fail in the longer term.

We would add caution here, that a repayment arrangement may need to be put in place over a long period of time in order to be sustainable. We would not support firms putting in place an arbitrary time period cut off for repayment agreements, e.g. arrears must be cleared within x number of years, as during the current cost-of-living ongoing pressures, this would not be fair to consumers. Any lengthy repayment term can be reviewed

regularly and payments potentially increased once the cost-of-living pressures have eased in the future.

Question 12: Do you agree with our proposals requiring firms to take reasonable steps to ensure that forbearance measures remain appropriate?

Yes, we agree that firms should regularly review arrangement with their customers to ensure that the forbearance measures put in place remain appropriate for that customer's circumstances.

We agree that the frequency of such a review should depend upon circumstances. However, this should not be so frequent as to give the appearance of pressurising people into paying more or to change the arrangements in place to their detriment.

Question 13: Do you agree with our proposals for firms to objectively undertake income and expenditure assessments?

Yes, we agree with these proposals. It makes sense to update references to the Standard Financial Statement as the Common Financial Statement is no longer in standard use (although it does form the basis of the Common Financial Tool in Scotland).⁴

Question 14: Do you agree with our proposed guidance for income and expenditure assessments on clear policies, assessing whether arrangements are appropriate and sustainable and making available to the customer a record of any income and expenditure assessment made to allow them to share with other lenders and debt advice providers?

These proposals make sense. We agree that a copy should be made available for the customer to be able to share with their other lenders and their debt adviser.

Question 15: Do you agree with our proposals on repossessions?

We support the proposals on repossession but would like to see the FCA go further. We would like to see the guidance strengthened in the light of poor practice we have come across with a specific firm. We believe firms should be willing accept informal payment arrangements where an acceptable offer is made, and not insist that a payment arrangement can only be made if set by a court. This practice would seem to us to be counterproductive, will cause extra stress and expense for the consumer, and is against the spirit of the guidance, and not indicative of good outcomes for consumers under the consumer duty.

⁴ <https://aib.gov.uk/about-aib/stakeholder-working-groups/common-financial-tool-cft-guidance-legislation-and-analysis>

Question 16: Do you agree with our proposals on voluntary termination?

We very much support these proposals as, in our experience at National Debtline, we have found firms to be less than transparent about consumer rights to terminate a hire purchase or conditional sale agreement under section 99 of the Consumer Credit Act 1974. We have often come across cases where the right of the customer to invoke voluntary termination of an agreement is not highlighted by the lender.

However, the paper says that the firm should inform the customer in good time “*where it may be in a customer’s interests to exercise their right to terminate*”. We are not clear why this level of discretion is given to the lender on deciding on a matter of a customer’s interests to take up this option. Surely timely information should be provided that is “*clear, fair and not misleading*” to all customers when they take out their agreements and repeated throughout the lifetime of the agreement.

We would also recommend that the guidance is strengthened to ensure that customers are informed of all the options available to them and how these would impact on them. For example, terminating under s99 of the CCA is not always the best option, although it often will be for many borrowers. In this Financial Ombudsman Service case study,⁵ it would have been more beneficial for the borrower to voluntarily surrender the agreement than to terminate the agreement under s99, but they were not told about this option.

Question 17: Do you agree with our proposed amendment to CONC App 1.2?

These proposals to amend the rules on APR calculations for open-ended credit agreements appear sensible.

Question 18: Do you have any comments on the increasing balances proposals?

It is vital that firms reduce or freeze interest accruing on arrears, and also stop adding fees and charges to the balance when this is required for a consumer in financial difficulties, who requests a forbearance arrangement. It is of course the case, that these should be frozen where the payments a customer can make are less than the interest and charges being added, as their overall balance will increase.

We think these measures should be strengthened. Interest and charges should be frozen from the time the consumer asks for help. Lenders should then look at freezing the interest and charges in the longer term to ensure that the forbearance measures put in place will work in the longer term. It is vital that lenders do not factor in what will cover their interest and charges first, before deciding whether to agree a repayment proposal.

⁵ [Consumer says options not explained when she wanted to exit a hire purchase agreement early because of financial difficulties \(financial-ombudsman.org.uk\)](https://www.financial-ombudsman.org.uk/consumer-says-options-not-explained-when-she-wanted-to-exit-a-hire-purchase-agreement-early-because-of-financial-difficulties)

We do not want to see firms deciding not to agree forbearance because their customer's mortgage or second mortgage balance is increasing. We would very much doubt that it is in most customers' "best interests" to be repossessed and become homeless, irrespective of how their balance is accruing.

Question 19: Do you agree with our proposal to change and extend the scope of the rules in MCOB 13.4.1R and MCOB 13.5.1R to ensure more timely disclosure of information on any payment shortfall?

We agree with the proposal to extend the scope of MCOB rules to make sure that information on missed payments is provided earlier. The current rules are too restrictive and too focused on technical definitions of what constitutes "arrears" as opposed to a "payment shortfall". We imagine this distinction is lost on most consumers.

We would also support the requirement to send regular statements at least quarterly to all customers in a payment shortfall, and not just where their arrears are attracting extra charges.

Question 20: Do you agree with our proposals to amend the guidance in MCOB 13.3.4DG?

We very much welcome the proposals to amend the guidance to make it easier for firms to consider capitalisation as an appropriate option. We have raised concerns previously that it is not likely to be in a customer's "best interests" to conclude that repossession is the right option. The impact on the customer of long-term issues such as a rising balance on the mortgage or higher repayments should not outweigh the very real effects of repossession and homelessness on that borrower. These should tend to outweigh the longer-term considerations of higher payments and a rising balance.

We believe that the fact that firms must consider if "the impact would be material" if capitalisation is agreed, (and therefore not automatically capitalise arrears) this should not override a decision that capitalisation is in the best interests of the customer. This measure should help with the impact of the cost-of-living crisis and help prevent repossession.

Question 21: Do you agree with the factors we propose a firm considers when determining whether capitalisation is appropriate?

The proposed factors to take into account on deciding whether capitalisation is appropriate appear to be reasonable.

However, the paper includes the following factor in this list at point 3.82.

"taking account of the customer's individual circumstances, the firm reasonably considers that capitalisation is in accordance with the customer's best interests"

We would like to see more detail given as to the definition of “best interests” as it is surely open to dispute when a lender thinks they know what is in someone's best interests, but the consumer strongly contests the conclusion.

Again, we would reference an impression that in the past, both the FCA and lenders considered repossession to be the best option to minimise a potential future debt burden. However, this presupposes that circumstances would not change. In addition, many people would not consider repossession and homelessness to be in their families' best interests.

Question 22: Do you have any comments relating to determining the affordability of future capitalised payments?

The options set out in the paper appear reasonable. It is particularly useful to set out that affordability could be demonstrated by the borrower having maintained a payment arrangement at a similar payment level as the capitalised monthly payment.

Question 23: Do you agree with our proposals for firms to ensure that forbearance arrangements remain appropriate?

Yes, as we have said in our response above, we agree that firms should regularly review arrangement with their customers to ensure that the forbearance measures put in place remain appropriate for that customer's circumstances.

Question 24: Do you agree with our proposed guidance on what we consider to be reasonable steps?

We agree that lenders should take “reasonable steps” to ensure that any arrangement where a consumer is unable to pay their mortgage payments in full is still appropriate.

We agree that the frequency of such a review should depend upon circumstances. However, this should not be so frequent as to give the appearance of pressurising people into paying more or to change the arrangements in place to their detriment.

Question 25: Do you agree with our proposals to provide additional guidance at MCOB 13.3.4CG to include taking account of wider indebtedness?

We support this proposal. It is of course imperative that lenders take account of other priority debts when making an arrangement to pay, otherwise there is a danger that the payment arrangement will be unsustainable or other priority bills such as energy or council tax go unpaid.

However, as lenders are not professional debt advisers, this should be subject to a requirement to refer on for free debt advice so that anyone in multiple debt can explore their financial circumstances holistically with a free debt adviser.

Question 26: Do you agree with our proposal for firms to share income and expenditure assessments with customers where possible?

This proposal is very sensible and we agree that firms who conduct an income and expenditure assessment with their customers should offer to share this with the customer. This should be helpful for the consumer, their debt adviser and other creditors.

However, we are not clear why the intention is to only offer to share this financial statement “where possible”. We cannot envisage a scenario where this is not possible.

Question 27: Do you agree with our proposal to extend the rule in MCOB 13.3.9R to include customers who have or may have payment difficulties?

We support this proposal, as it would be consistent practice to maintain records of how a firm has dealt with customers with payment difficulties. In line with other MCBO provisions.

Question 28: Do you agree with our proposed clarification on recording video calls in MCOB 13.3.9R? Do you agree with our proposal not to extend this to those facing payment difficulties?

We cannot comment as the proposed rule seems to suggest keeping records to include recording of phone conversations as well as video calls where someone is in payment difficulties is required, but the question implies that it does not.

Question 29: Do you have any comments on the proposed amendments to MCOB 13.8?

The proposed amendments to MCOB 13.8 sound sensible.

Question 30: Do you have any comments on the consequential impacts to: a. MCOB 14? b. MCOB 15

We do not have any comments on the consequential impacts to these sections of MCOB.

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