

# Consultation response: FCA Mortgage customers: responsible lending rules

Response by the Money Advice Trust

Date: June 2019

# Contents

- ✓ Page 2 Contents
- ✓ Page 3 Introduction / About the Money Advice Trust
- ✓ Page 4 Responses to individual questions
- ✓ Page 9 Contact details

# 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 2018, our National Debtline and Business Debtline advisers provided help to more than 204,000 people by phone and webchat, with 1.7 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 2018 we delivered this free training to over 820 organisations. Furthermore, Money Advice Trust Training and Consultancy services have worked with over 224 commercial organisations to identify and support their customers in vulnerable circumstances.

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.

## Public disclosure

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

# Introductory comment

We welcome the opportunity to comment on the FCA's proposals to change the responsible lending rules and guidance for eligible existing mortgage customers.

We support these proposals and hope that they go some way towards resolving the situation facing borrowers trapped on higher-rate mortgages, the so called "mortgage prisoners".

We would expect the FCA's proposals to remove some of the barriers preventing borrowers in this situation to move onto lower-rate mortgages. However, as the FCA is not intending to require lenders to offer these products, **it remains to be seen how many lenders** will offer new mortgages to borrowers in these circumstances with interest-only mortgages. We wonder if these new rules will therefore be sufficiently effective in addressing the harm identified. We note that UK Finance have stated that they believe that regulated lenders are not able to solve the problem by themselves, and that further government intervention is required.<sup>1</sup>

Having said this, the proposed rule changes need to be put in place **as swiftly as possible**, so that the harm being suffered by this group of mortgage borrowers is alleviated.<sup>2</sup> However, we have serious concerns that the proposals as they stand will give too long a lead-in period for existing inactive or unregulated lenders to comply with new rules to inform their borrowers about alternative mortgage options. We would favour an immediate requirement on such lenders to take action without an extensive compliance period.

It will be vital for the FCA to **monitor the effectiveness of this intervention** early and regularly, as it will be very important to find out if the rule changes do not have the desired effect. If mortgage borrowers remain in this unfair position despite the changes, then further action will be necessary. For instance, mortgage lenders are not obliged to offer new mortgage products or to use the proposed modified lending criteria. If mortgage lenders fail to enter the market due to their commercial risk appetite and do not offer new products to borrowers in this situation, the unfair position for "mortgage prisoners" will persist.

We share the concerns of the new APPG on mortgage prisoners<sup>3 4</sup> that the FCA rules will not go far enough as it will not protect customers with inactive lenders or unregulated asset owners. We also note concerns have been raised that such borrowers are not being treated in accordance with FCA MCOB rules on forbearance.<sup>5</sup> The government may well need to take action to prevent sales of mortgage books to inactive lenders or unregulated lenders. We support the call for a duty to be imposed to ensure that such sales are only made to active lenders who are willing and able to offer new mortgage deals and competitive interest rates.

---

<sup>1</sup> <https://www.ftadviser.com/mortgages/2019/04/15/trade-body-calls-for-government-action-on-mortgage-prisoners/>

<sup>2</sup> [Despite promises, mortgage prisoners will remain captive for years yet](https://www.ftadviser.com/mortgages/2019/04/15/trade-body-calls-for-government-action-on-mortgage-prisoners/)

<sup>3</sup> <https://www.politicshome.com/news/uk/communities/housing/house/house-magazine/104274/parliamentary-group-mortgage-prisoners>

<https://www.appgmortgageprisoners.com/>

<sup>4</sup> <https://www.ftadviser.com/mortgages/2019/04/29/mortgage-prisoners-put-pressure-on-fca-and-treasury/>

<sup>5</sup> Panorama Trapped by my mortgage October 2018 <https://www.bbc.co.uk/news/business-45938487>

# Responses to individual questions

## **Question 1: Do you agree that our proposals should only apply to firms dealing with consumers that meet the conditions of ‘eligible consumers’?**

We would agree that these proposals would appear to take a sensible approach. It is important to have an easily identifiable group of target customers with clear boundaries around their eligibility for the product. This will serve to minimise the possibility of the new rules allowing lenders to offer unaffordable mortgage products once more to a wider group of customers; thus undermining the original purpose of the Mortgage Market Study MCOB affordability rules.

## **Question 2: Do you agree that ‘up-to-date with payments’ should be decided by not being in payment shortfall, both at the time of application and over the previous 12 months?**

We can see that these proposals appear sensible on the surface. There would appear to be no point in offering new mortgage lending where someone is already in financial difficulties and unable to keep up with the payments. However, this does not take into account the possibility that there has been a one-off crisis or set of unusual circumstances that caused the borrower to miss a payment. We do think there should be an exception built into the rules to assist people in such circumstances, particularly where their pattern of payments has been good overall. Perhaps this should involve a specific ‘exceptional circumstances’ process where the borrower can put their case to the lender and explain what happened in their particular case.

Furthermore, whilst we understand that these rules are intended to be straightforward, we would point out that the reason someone might have failed to be up-to-date with their payments is because they are paying an unusually high interest rate for a very long time, and suffered detriment as a result. There must be some “give” in the system to allow such borrowers to demonstrate why they would be able to afford the new lower payments, even if they do not “on paper”.

## **Question 3: Do you agree with our approach to defining a ‘more affordable’ mortgage, both where product or arrangement fees have been added to the mortgage and where they have not?**

We agree with the approach adopted by the FCA in defining a “more affordable” mortgage. However, it will be vital that borrowers are given very clear and simple product comparisons to enable them to see whether they will be better off with the proposed new product over the lifetime of their mortgage. Once arrangement fees have been added to the total owed, a new product may well be of marginal benefit in reducing the borrower’s mortgage payments overall or the costs over the lifetime of the mortgage.

#### **Question 4: What are your views on a definition of ‘more affordable’ that refers to both the interest rate during any incentivised deal period and the new lender’s existing reversion rate at the time?**

We believe this proposed definition of “more affordable” is reasonable as it is important to consider the impact of the new mortgage over the lifetime of the mortgage. If the existing mortgage is still in a discounted introductory period, then this would affect the overall affordability of the new mortgage. It is important to compare the interest rates that apply across the new and existing mortgage products consistently.

#### **Question 5: Do you agree that we should allow lenders to extend the term of the mortgage when they undertake the modified assessment?**

Yes, we would not like to see further restrictions on the ability of lenders to extend the term of the mortgage if appropriate in the circumstances. The requirement for a simple and clear explanation to be provided to borrowers to see what effect an extension of the term will have on what they have to pay back in total is, of course, essential.

#### **Question 6: Do you agree with our proposal to only allow lenders to use the modified affordability assessment if they have a policy allowing consumers to switch to a more affordable mortgage?**

Yes, this proposal appears to make sense. We share the FCA’s concerns that there could be a risk that a consumer could switch to a cheaper initial deal, but this could revert to a higher reversion rate than before after a period of time, and one that they cannot afford.

It is therefore important that the new lender must be an active lender, and follow a policy that allows all their existing customers to switch mortgage products after the initial discounted mortgage-rate period expires.

#### **Question 7: Do you agree that we should allow lenders that choose to use the modified affordability assessment to disapply our income and expenditure rules (MCOB 11.6.5R to 11.6.15G)?**

Yes, we support these proposals as they will allow lenders to grant mortgages to this specific group of eligible customers without following the usual FCA rules relating to income and expenditure.

#### **Question 8: Do you agree that we should require lenders to consider whether the consumer’s income after retirement would be enough to enable them to meet their commitments under the contract?**

We can see that it is a good idea for lenders to consider whether a borrower’s likely income after retirement will be enough for them to continue to pay the mortgage before taking out the new contract.

## **Question 9: Do you agree that we should allow lenders that choose to use the modified affordability assessment to disapply our interest rate stress test rules (MCOB 11.6.18R to 11.6.19G)?**

Yes we agree with this proposal. If someone is paying a high interest rate on their current mortgage, they have therefore demonstrated that they can keep up with their payments at that higher interest rate. It therefore seems to make little sense to stress test the interest rates on their new lower-interest mortgage to make sure they can afford a lower amount than they are paying now.

## **Question 10: Do you agree that we should introduce guidance that, if considering future interest rate rises, lenders may wish to take into account the fact that the consumer is currently meeting payments at a higher rate than on the more affordable mortgage?**

Yes, we support the proposal that the FCA produces guidance to this effect, for the reasons we have set out above.

## **Question 11: Do you agree that we should allow lenders that choose to use the modified assessment to disapply MCOB 11.6.40G to 11.6.48R and MCOB 11.6.50R to 11.6.52G as long as the consumer is not trying to increase the proportion of the loan on an interest-only basis?**

We would applaud the FCA for coming to this conclusion. We strongly support the principle expressed in the paper that recognises that a consumer stuck on a higher interest rate on an interest-only mortgage is at risk of harm that will be reduced, if not eradicated by being allowed to pay more affordable mortgage payments. The ability to pay lower monthly repayments might allow the borrower to develop a strategy to repay their interest-only mortgage in the future.

*“3.36 A consumer who does not have a credible repayment strategy in place is already at risk of harm. We do not think this should disqualify them from getting a more affordable mortgage. And for customers of inactive lenders or unregulated entities, an active lender will have more options to support maturing interest-only customers in the future.”*

However, as the FCA is not intending to require lenders to offer these products, it remains to be seen how many lenders will offer new mortgages to borrowers in these circumstances with interest-only mortgages. We wonder if these new rules will therefore be effective in addressing the harm identified.

## **Question 12: Do you have views on whether the modified assessment should be available for home movers looking to switch to a new lender?**

We would support this proposal as it is likely to be very helpful for borrowers who want to move house. We do not think there should be an MCOB rule that the new mortgage must be on the same property. There may be all sorts of good family reasons or employment reasons why someone should wish to move. We do not believe that they should be prevented from doing so unless this is for good reason.

Downsizing might reduce household outgoings and bills. However, we do take the point that, in some cases, expenditure might increase, due to travel costs or higher household bills. The move might be for work purposes, where the inability to move affects current and future job prospect. As a result, it might become impossible to maintain the mortgage on the current home. A rigid set of rules that apply only to mortgage borrowers in their existing home, seems to us likely to lead to unhelpful outcomes for people who wish to move.

### **Question 13: Do you agree that we should require inactive lenders and administrators acting for unregulated entities to contact their customers and make them aware that our rules mean they may be able to switch to a new mortgage product with a new lender?**

Yes we strongly agree that inactive lenders and administrators acting for unregulated entities should be required to contact their customers. It is very important that these customers are made aware of the new rules as soon as possible. We are however, concerned that the paper suggests a deadline of 13 months for such a communication to be sent after the introduction of the new rules. This seems to be a very long time where a borrower could be paying a higher rate on their mortgage than necessary. We would favour a much shorter compliance period to minimize the potential detriment caused to these customers. We would therefore support an immediate requirement on such lenders to take action without an extensive compliance period.

### **Question 14: Do you agree that administrators and inactive lenders should only contact customers that have a residential mortgage, that is not a lifetime mortgage, and who are up-to-date with payments and on a reversion rate?**

These proposals appear sensible. However, in our response to Question Two, we suggested that there may be circumstances where there has been a one-off crisis or set of unusual circumstances that caused the borrower to miss a payment. If there is a possibility of some leeway on the requirement to be up-to-date with payments for the last 12 months, then it might be more appropriate to send such communications out to borrowers who otherwise qualify but have missed a limited number of payments within the last 12 months.

However, the communication would need to manage expectations by highlighting that the normal requirement to transfer under the modified assessment rules is to be up-to-date with payments.

### **Question 15: Do you agree we should require lenders to give this disclosure?**

We always welcome requirements on lenders to provide clear, simple information about how the product will work, and the potential risks involved. We would expect the FCA to set out a standardised format for this disclosure that includes prescribed wording in plain English.



## **Question 16: Do you agree we should require lenders to report data on use of the modified affordability assessment?**

Yes, we support this proposal, as it is very important to track whether lenders are using the modified affordability assessment, and if not, to establish why that is the case. However, we are unable to comment on how this should work in practice, as we are not from the mortgage lending sector.

## **Question 17: Do you agree that we should amend SUP to state that, where lenders have sold a mortgage using the modified assessment, they are not required to report the affordability data required in PSD**

Again, this seems to be a sensible proposal which should help to minimise unnecessary reporting requirements on lenders under the new modified assessment rules.

**For more information on our response, please contact:**

Meg van Rooyen, Policy Manager  
[meg.vanrooyen@moneyadvicetrust.org](mailto: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](mailto:info@moneyadvicetrust.org)

[www.moneyadvicetrust.org](http://www.moneyadvicetrust.org)