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All Party Parliamentary Group on Mortgage Prisoners

CP19/14 Mortgage customers: proposed changes to responsible lending rules and guidance

We are writing on behalf of the All-Party Parliamentary Group (APPG) on Mortgage Prisoners in response to the FCA's consultation on 'Mortgage customers: proposed changes to responsible lending rules and guidance'. The APPG has been contacted by over a hundred mortgage prisoners and we have used their stories and input to develop our response.

There are around 150,000-200,000 mortgage prisoners and they deserve urgent action from the FCA and the Government to ensure that they receive a fair treatment and a fair deal.

Mortgage prisoners have paid thousands of pounds more in interest and some face losing their homes, leading to stress, ill-health, depression, relationship breakdown and damage to their businesses and credit records. More than anything, they have told us how frustrating it is to be paying 5% or 6% and be told that they cannot "afford" a mortgage which would halve their interest rate and reduce their mortgage payment significantly. Mortgage prisoners are uniquely disadvantaged as they are unable to join the vast majority of borrowers who avoid punitively high standard variable rates (SVRs) by regularly switching to lower fixed rate or variable rate deals.

We welcome this consultation and the intention behind the new modified affordability test which will help more mortgage prisoners to switch to a different lender, benefit from lower interest rates and allow them to gain some certainty over their mortgage payments by accessing a fixed rate. The APPG believes that the modified affordability test should be implemented quickly, be as wide as possible and communicated clearly to all mortgage prisoners.

But the FCA proposals will not help everyone and many mortgage prisoners will remain trapped with their existing lender and still be vulnerable to exploitation. The APPG will be examining how proper protections can be put in place for those mortgage prisoners who cannot switch. It is important that the FCA is clear that ensuring the proper degree of protection for these customers will require further action from the Government and the FCA. If the FCA considers that it does not have appropriate powers then it should make the case to the Government for an expansion to the scope of its regulation.

The APPG's recommendations for this consultation include:

The changes to the affordability test must be implemented quickly: It is vital that the changes to the affordability test are introduced as soon as possible. Mortgage prisoners have already waited over 10 years and can't afford to wait any longer. The threat of rising interest rates also increases the urgency of mortgage prisoners being able to secure a more affordable mortgage. Following the close of the consultation on 26th June, the FCA should announce the policy statement by the end of

July. Given the ongoing detriment being suffered by mortgage prisoners the changes should be brought into force immediately after publication of the policy statement. The FCA should tell lenders to give mortgage prisoners 'breathing space' around the introduction of the changes and halt any repossession action until mortgage prisoners have been informed of the changes and given a chance to switch lender.

The scope of the modified affordability test should be as wide as possible: The modified affordability test should be available to customers in arrears. Excluding customers in arrears would discriminate against vulnerable consumers and be deeply unfair. Many mortgage prisoners may only be in arrears because they have been charged excessive interest rates, have cancelled their direct debit or been a victim of unfair treatment from unregulated or inactive lenders. The modified affordability test must also be available to home movers. We have been contacted by mortgage prisoners with health problems or living in over-crowded conditions who will need to move to more suitable properties. It should also be available to customers wanting to remove one person from the mortgage due to being a victim of domestic abuse or controlling behaviour. Finally, it should allow mortgage prisoners to consolidate the unsecured element of their 'Together' mortgage or other similar product.

The modified affordability test should be compulsory for mortgage prisoners switching within firms or banking groups: Firms should be required to apply the modified affordability test to their existing customers switching within the same firm or within the same banking group. The FCA should also expand the scope of MCOB 11.8.1E to stop firms exploiting mortgage prisoners by leaving them within inactive subsidiaries in a banking group.

The changes to the affordability test should be communicated by the mortgage providers quickly, clearly and effectively to mortgage prisoners: All mortgage prisoners should receive a letter informing them about the new affordability test within 3 months of the proposals coming into force. They should receive reminders at 6 months and 12 months and in every subsequent annual mortgage statement. The FCA should develop a section of its website to explain the changes and require all inactive and unregulated lenders to link to this information from their websites.

Stronger protection for customers including a requirement to give advanced warning of an intention to sell a mortgage book and a ban on sales of mortgages to unregulated entities, inactive lenders and vulture funds: The FCA should introduce the requirement to offer existing customers new deals set out in the UK Finance voluntary agreement into regulation. The FCA should ensure that under Principle 7, any firm considering selling its mortgage book should be required to inform customers immediately and warn them that they may become trapped and unable to switch away from the new lender and allow them to move without penalty prior to the sale. The FCA should prohibit sales of mortgage books to inactive lenders and unregulated entities.

Active lenders should not unreasonably refuse to apply the modified affordability test to new customers who are currently mortgage prisoners with another lender: Firms should ensure that the default is to apply the modified affordability test to relevant customers switching from another entity and should only depart from this in exceptional circumstances.

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Responses to the individual questions

Q1: Do you agree that our proposals should only apply to firms dealing with consumers that meet the conditions of 'eligible consumers'?

The FCA proposes that 'eligible consumers' must have a current mortgage, be up-to-date on mortgage payments, not want to borrow more (other than to finance product fees for the mortgage), and be looking to switch to a new mortgage on their current property.

The APPG believes that it is vital for the FCA to broaden the criteria. We are particularly concerned with the requirement that consumers should not have been in arrears within the past 12 months. Some mortgage prisoners may only have been arrears for a short period and for a particular reason. The FCA's proposal would exclude thousands of mortgage prisoners from switching and could lead to unregulated lenders setting their forbearance policies to increase the prevalence of arrears to increase the number of trapped customers. The APPG has received numerous reports from mortgage prisoners of their lenders and mortgage administrator treating them unfairly and damaging their credit record.

Many customers are only in arrears because of the high mortgage payments they are making because they are stuck on a lender's Standard Variable Rate. Some mortgage prisoners cancelled their Direct Debit and are making payments each month using bank transfer or debit card. However, even if they are making their monthly payment we have received evidence from them that their lender technically classifies them as being in arrears. We think this practice is unfair and appears to be unfairly damaging the credit records of vulnerable people. The FCA should investigate the extent of this practice. Other customers may have negotiated or been offered a 'payment holiday' or temporary switch to interest-only and therefore be classified as being in arrears. It would be deeply unfair if these customers were excluded from taking advantage of the modified affordability assessment.

The APPG is concerned that excluding customers in arrears would allow lenders to single out customers in financial difficulty and leave them stranded on excessive standard variable rates with no prospect of switching to a better deal. This would discriminate against mortgage prisoners in arrears, many of which will be vulnerable consumers.

Mortgage prisoners in arrears should have just as much right to access an affordable mortgage and to gain certainty of their payments and to switch away from an unregulated lender as any other consumer.

The FCA should also ensure that its proposals for a modified affordability test apply to all existing customers remortgaging with the same firm, and those looking to do so within the same banking group. This will help stop lenders from leaving trapped customers in inactive, separately authorised subsidiaries and exploiting these customers with high and less favourable interest rates. The FCA should also expand the scope of MCOB 11.8.1E to stop firms exploiting mortgage prisoners by leaving them within inactive subsidiaries within a banking group. MCOB 11.8.1E should be applied at a group level and should be used to stop the harm occurring within regulated lenders.

Second charge mortgages and linked 'Together' unsecured loans

The APPG welcomes the provision that customers will be able to consolidate existing second charge mortgages and still benefit from the modified affordability assessment. The APPG has received questions from consumers about whether second charge mortgages are included and so we suggest that the FCA highlight the inclusion of second charge mortgages when it announces the final rules.

We have also been contacted by a number of 'Together' mortgage customers noting that if they move to a different mortgage lender and 'de-link' the unsecured loan then the interest rate charged can increase by 3%, 5% or 8%. Indeed, for some, these provisions have scuppered previous attempts to switch their mortgage to a different lender. The APPG recommends that mortgage prisoners should be able to consolidate the 'Together' loan into their mortgage and still benefit from the modified affordability test. Many mortgage prisoners with Together mortgages will be able to demonstrate that they can meet the current level of payments on both the secured and unsecured elements of their loans and should not be restricted from benefitting from the new rules.

Removing one party from the mortgage

The APPG have been contacted by mortgage prisoners who have experienced serious domestic abuse including controlling behaviour and refusal to pay child support. Some of these mortgage prisoners would like to remove their abusive ex-partner from the mortgage. They are already working to meet the entire mortgage payment on their own and should not be excluded from accessing the modified affordability assessment if they are removing their ex-partner from the mortgage.

Q2: 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?

No, we disagree with this proposal. This would allow firms to single out customers in arrears or have been arrears in the previous 12 months and continue to exploit them by charging a high SVR. Under the FCA's proposal mortgage prisoners who had been in arrears for a short period or for a clear reason such as illness or a payment holiday would be excluded being able to use the new affordability test.

The APPG would prefer that there be no restrictions on the use of the modified affordability test on the basis of arrears, or if the FCA insists on including one then it should only exclude customers more than 6 months' worth of mortgage payments in arrears – meaning that only customers with very serious arrears would be restricted from using the modified affordability test. We would also expect the FCA to allow customers who have been in arrears for a short period or for a particular reason to be allowed to take advantage of the modified affordability test. This would include allowing those mortgage prisoners who have negotiated reduced payments, a payment holiday or a temporary switch to interest-only to take advantage of the modified affordability test.

Q3: 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 proposals to define a more affordable mortgage as one with a lower interest rate. We also agree that mortgage prisoners should be able to add product and arrangement fees to the mortgage.

Many mortgage prisoners contacting the APPG have expressed a desire to move from an interest-only mortgage to a repayment mortgage. Unless they are able to do this, many mortgage prisoners with interest-only mortgages will be facing repossession in their 60s or early 70s. We believe that the definition of a 'more affordable' mortgage should be expanded to allow consumers to make increased payments where they switch from an interest-only to a repayment mortgage.

Q4: 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?

The APPG believes that the definition of 'more affordable' should only refer to the interest rate during any incentivised deal period. Provided that the lender is committed to offering all of its customers access to new deals then the primary consideration should be the interest rate available during the deal period. It is vital that at the end of the initial deal period, customers are guaranteed to be able to access new deals. To provide the proper degree of consumer protection and stop lenders from subsequently reneging on their commitments we recommend that the FCA incorporates the current UK Finance voluntary agreement into regulation. The FCA should also remove the restrictions on customers not being able to access new deals if they are in arrears or only have two years to go before the end of their mortgage.

Q5: Do you agree that we should allow lenders to extend the term of the mortgage when they undertake the modified assessment?

Yes, it is vital that lenders are allowed to extend the term of the mortgage when they undertake the modified assessment. This will be particularly important for customers with interest-only mortgages who need a term extension, possibly combined with a switch to full or partial capital repayment. However, consumers should be informed that extending the term could lead to them paying more interest overall.

Q6: 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, we agree that only lenders which allow consumers to switch to a more affordable mortgage should be able to use the modified affordability assessment. This would help protect consumers after their initial deal expires at the new lender. To provide the proper degree of consumer protection and stop lenders from subsequently reneging on their commitments we recommend that the FCA incorporates the current UK Finance voluntary agreement into regulation. The FCA should also remove the restrictions on customers not being able to access new deals if they are in arrears or only have two years to go before the end of their mortgage. It should also introduce restrictions preventing the sale of mortgages to inactive lenders or unregulated entities.

Q7: 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 agree with these proposals.

Q8: 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 are concerned that lenders may use this provision to deny mortgages to those close to or over retirement age. The FCA should issue guidance to make it clear to lenders that they should take a proportionate approach to assessing a consumer's income in retirement.

This provision should also be disapplied if the consumer is already in retirement or if they are switching to a retirement interest-only mortgage. If the consumer is already retired or applying for a retirement interest-only mortgage then the sole test should be whether the mortgage is more affordable.

Q9: 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 that lenders should be able to disapply the interest rate stress test rules.

Q10: 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. The FCA's guidance should reflect the reality that the consumer has been making payments at a higher rate than they would have to do so on the more affordable mortgage.

Q11: 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?

Yes, we agree. Consumers with interest-only mortgages who are not trying to increase the proportion of the loan on an interest-only basis should be able to benefit from more affordable mortgages, even if they do not have a credible repayment strategy in place. Unless interest-only customers are able to move away from unregulated and inactive lenders thousands will be put through the traumatic experience of facing repossession in their mid-60s or early 70s. We are aware that due to gaps in the FCA's guidance on the treatment of interest-only mortgage customers, unregulated or inactive lenders will typically not offer consumers any options at maturity other than full repayment of the balance or repossession / sale of the property.

Lenders should continue to inform consumers with interest-only mortgages that they should consider what repayment strategy they might use. Lenders should also be clear about what options they will offer interest-only customers at maturity.

Q12: Do you have views on whether the modified assessment should be available for home movers looking to switch to a new lender?

Yes, the APPG recommends that the modified affordability assessment should be available for home movers looking to switch to a new lender. It is important that mortgage prisoners are able to downsize or to move to more suitable properties as they approach retirement or experience changes to their health or other circumstances. The APPG have been contacted by mortgage prisoners who are currently in unsuitable and overcrowded properties and that this is having a detrimental impact on them and their families. They must be able to use the new modified affordability test to move to a property more suited to their needs.

Q13: 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, inactive lenders and administrators acting for unregulated entities must be required to contact their customers to make them aware that the FCA's new rules mean they might be able to switch to a new, and potentially cheaper, mortgage with a new lender.

The FCA currently proposes that this communication will be a one-off requirement which must be sent within 13 months of the introduction of the new rules. This would mean that some mortgage prisoners would not find out about the new escape route until the end of 2020. Thousands of mortgage prisoners are currently paying excessive interest rates and such a long delay would be unacceptable. Previous work conducted by the FCA has also indicated the weaknesses of one-off communications in ensuring an appropriate response rate from consumers. It is important that consumers receive multiple communications and that these communications are drafted in a way to maximise engagement and response.

In addition to the communications the APPG recommends the development of a section of the FCA website explaining the details of the changes and sources of independent mortgage advice.

The APPG recommends that the following communications should be made by inactive and unregulated lenders:

- 3 months of the proposals coming into force: Mortgage prisoners would receive a letter highlighting the new modified affordability test and with a clear statement that they are now far more likely to be able to switch to a new mortgage lender. As well as informing them about the changes this communication should also highlight sources of independent mortgage advice. This communication should also include a link to an FCA website giving details of the changes.
- A repeat of the 3 month communication should also be sent 6 months and 12 months after the proposals come into force.
- Details of the changes and a link to the section of the FCA website should be included in the content of the annual mortgage statement required by MCOB 7.5.
- The regulated administrators of loans for inactive or unregulated lenders should be required to display details of the changes on a dedicated section of their websites and should link to this information from the section on interest-rates using a hyperlink under the section "Would you like a new mortgage deal?"

Q14: 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?

The aim should be to ensure that all those who potentially stand to benefit from the revised affordability assessment are informed about the changed assessment and how they can take action. Administrators and inactive lenders should be required to contact all eligible customers, noting that as recommended in our answer to questions 1 and 2, consumers who are or have been in arrears should be considered eligible customers.

Q15: Do you agree we should require lenders to give this disclosure?

Yes, we agree that the FCA should require lenders to give this disclosure.

Q16: Do you agree we should require lenders to report data on use of the modified affordability assessment?

Yes, we agree that lenders should be required to report data on the use of the modified affordability assessment. Individual lenders should also be required to publish this data so that mortgage prisoners and policy makers can understand which lenders are making use of the modified affordability assessment. The FCA should aggregate and publish this data on the overall use of the modified affordability assessment across the industry. It should also consult with lenders and conduct a thematic review into the types and characteristics of the mortgage prisoners which are able to switch under the new modified affordability assessment and those who are having their applications refused.

The FCA should also gather and publish data on the number of mortgage prisoners and those in inactive and unregulated lenders every 6 months for the first two years following the introduction of the new modified affordability test.

Q17: 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?

Yes, we agree that where lenders have used the modified assessment they should not be required to report the affordability data required in PSD.

The FCA should require lenders to submit specific data on their use of the modified affordability test and which elements they have relaxed to enable consumers to qualify. This should be used to evaluate the impact of the introduction of the modified affordability test.

The APPG on Mortgage Prisoners

This submission has been prepared by the APPG based on the specific issues raised by over one hundred mortgage prisoners with us.

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