MoneySavingExpert

Response to FCA Consultation Paper CP23/13:

Strengthening Protections for Borrowers in Financial Difficulty: Consumer Credit and Mortgages

MoneySavingExpert (MSE) welcomes the opportunity to respond to this consultation. This response summarises our broad endorsement for strengthened protections for struggling credit and mortgage customers and the inclusion of aspects of the Tailored Support Guidance (TSG) within the FCA Sourcebooks – similar to our response to the insurance guidance consultation submitted in March.

In particular, it is important and reassuring to see that measures apply for any borrower who is or may be at risk of financial difficulty, whatever the reason – which will help to make this policy enduring and futureproof to other economic shocks facing consumers. We recognise that this will also complement the aims of the Consumer Duty.

This builds on work we have done to identify barriers to struggling borrowers seeking help from their lenders, as well as findings from the FCA's Borrowers in Financial Difficulty (BiFD) work. We welcome any measures which help to lift the following barriers:

- **Communication and transparency**. Ensuring lenders are transparent and upfront about the potential measures of support available, but also making clear the potential implications if a borrower does or does not accept mortgage help.
- **Reversibility**. Where forbearance has been agreed, lenders should make it easier for borrowers to do this temporarily or to switch back to the original terms of their mortgage when ready to do so. This would help encourage higher acceptance of help that would be in their best interests and would prevent them falling into arrears.
- **Impact**. Reducing the impact of accepting mortgage forbearance on a homeowner's financial situation, and in particular, their credit file.

We will, as always, continue to monitor the actual impact of these protections in consumer feedback and share any concerns with the FCA.

<u>Responses</u>

Q1: Do you agree with our proposed changes to the scope of:

a. **CONC 5 & 7?**
b. **MCOB 13?**

We support the FCA's expansion to the scope of its rules so that they apply to customers who have indicated they are at risk of missing a payment, and not just those who have already done so.

It is positive that the FCA has specifically identified examples where it may also be possible to proactively identify such credit customers – such as repeat use of overdrafts or behaviour on other accounts with the same firm. We hope that this results in an expectation that firms will respond to these indicators.

While it is reasonable that, in the context of mortgages, there is no requirement to proactively identify struggling customers as firms may lack relevant information, we would encourage the FCA to work with firms to embed processes that might help to identify this information where possible. This is particularly important given customers' own perceptions of what firms can do to help them often prevents them from communicating with their lenders – findings reflected in the FCA's own BiFD work.

Whilst we are mindful of the FCA's comments on 'over-forbearance', we would like to see the FCA specifically asking firms to help up-to-date borrowers consider temporary options (such as those in the Mortgage Charter) which may available – so that a customer can take temporary respite to reorganise their finances. As well as being transparent about these options being available, customer awareness of these options is important from an engagement perspective – those who are not at least aware of these options may then be reticent to return to the lender if they fall into further difficulty.

Q2: 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?**

Appropriate reviews of policies and procedures – particularly those in response to external shocks – should theoretically result in greater transparency and better outcomes for customers, so MSE is in favour of these proposals. Additionally, this should allow the FCA greater oversight where these reviews have not been adequately performed.

However, we note that the consultation references specific examples of when a review may be appropriate that are not written into the regulations – such as changes in the economic environment or in response to internal reviews. MSE sees that it may be helpful to include a non-exhaustive list of appropriate circumstances for a review either in regulation or in supporting guidance.

Q3: Do you have any comments on our updated references to the fair treatment of vulnerable customers:

a. **for CONC 7?**
b. **for MCOB 13?**

MSE supports the move to expand expectations on treatment of vulnerable customers as per FG21/1: Guidance for firms on the fair treatment of vulnerable customers. We encourage the FCA to engage with relevant stakeholders to continually ensure this guidance is fit for purpose and takes into account a range of current and emerging vulnerabilities.

Q4: 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?

And

Q5: 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?

MSE has noted that it has previously been helpful for the FCA to clarify forbearance options for a range of regulated products, and to specifically identify that the list is not exhaustive. Therefore MSE supports expanding the examples given within CONC and MCOB, but the FCA should ensure that these are kept under review in response to market innovation.

It has been widely found that transparency and availability of information on possible forbearance options is a key barrier to engagement when consumers have difficulty paying. In addition, the FCA's own BiFD work identified that many customers perceive that firms cannot do very much to help them in difficult circumstances. We are pleased to see that for mortgages and overdrafts, the FCA will require firms to include the range of options it will consider prominently on the website. To aid transparency and engagement with support mechanisms, we would also like to see this requirement for all other credit products.

Further, we are in agreement with the FCA that firms should be expected to offer to communicate with customers through a range of channels, customers' preferred channel, and should change the channel if needed.

Another key barrier to customer engagement in financial difficulty is the potential credit impact of taking up various help and forbearance options. Therefore, we would also like to see the FCA add to its expectations that firms should include an indication of the potential credit impact of taking up an option (and the impact of not taking it up and missing repayments) within this publicly accessible information on forbearance.

Q6: 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?

MSE supports any strengthening of expectations on firms to help struggling borrowers to access debt advice. It is noted that the FCA has also clarified that firms will be able to refer customers to free-of-charge commercial debt advice, though we would like to see the FCA further safeguard customers by also requiring firms to share not-for-profit debt advice services as an alternative – so that this option is *always* presented alongside. As an example, this would further protect customers who would otherwise begin engagement with a commercial debt advice service that could be free at the point of access but could leverage additional fees and charges further down the line.

Q7: 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)?

As noted above, perceived impact of taking up forbearance is a key barrier to struggling borrowers seeking help from their lenders – in particular, the credit impact. Therefore, we are pleased to see that the FCA will expect firms to help customers understand their financial position, including the potential implications of taking up an arrangement on their overall balance and credit file.

We are also reassured to see that this expectation includes that a customer should be told about the implications of *not* taking up an arrangement. As above, we would like to see the FCA leverage an expectation on firms that they also give an indicative credit impact in their publicly available information on available forbearance options.

MSE welcomes measures to prevent suspension or removal of overdraft facilities where it might cause financial hardship, and the clarification of its definition of *financial hardship*. However, we ask that the FCA engages with other stakeholders on whether this definition – that they are unable to pay priority debts or living expenses – is adequate for all cases.

Credit specific proposals

Q9: 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?

The proposal to introduce this requirement is welcome, however we have concerns about the flexibility given to vary these agreements over the term of the arrangement. Ideally, if a provision to prevent an escalating balance is agreed, this should remain for the entire term of the arrangement – or at least until that arrangement is reviewed at an appropriate interval. This would provide consumers with security over what they are expected to pay and would prevent unintended consequences on other financial commitments. MSE would like to further understand the justification for including variations if a customer's circumstances change.

If the provision to allow for changes to waived, reduced or suspended interest or charges remains, then it should be required that firms give appropriate notice on these changes so that a customer has time to rearrange their finances accordingly, if this is possible, or inform the lender of other considerations on their budgets that they may be unaware of.

Q10: Do you agree with our proposals on introducing guidance to help firms determine necessary and reasonable charges?

MSE supports the move to give guidance for fees and charges on what 'reasonable' might look like.

While an average of the cost across the relevant business could be reasonable, we ask the FCA to reconsider the impact on those for whom the costs of these charges are disproportionately higher than their individual cost of administration.

For example, for those who have smaller defaults/arrears, but for whom these represent a significant challenge to their financial situation, a cost that is reflective of the average across the relevant business may put them in a worse position than they might otherwise have been – for example if charges wiped out any financial gain achieved from the adjustment of the contract, or if the charges exacerbate their financial difficulty further.

Q11: Do you agree with our proposals on sustainable repayment arrangements?

MSE supports the move to specify that there is an expectation for firms to consider if an arrangement is sustainable in the context of other living expenses and priority debts. We ask that the FCA also considers whether it is also appropriate to more clearly define what is meant by a 'priority debt' – for example, this may apply to a payday loan, which may be attracting far higher interest or charges and cause disproportionate harm to the consumer than a mortgage or loan debt or arrears.

Q12: Do you agree with our proposals requiring firms to take reasonable steps to ensure that forbearance measures remain appropriate?

MSE largely supports this proposal but will continue to engage with the FCA on whether firms are deemed to be meeting these objectives (and those of the Consumer Duty) in practice and through their policies.

Q13: Do you agree with our proposals for firms to objectively undertake income and expenditure assessments?

And

Q14: 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?

MSE supports this move, and particularly the inclusion of clear written policies on when and how these assessments are used. MSE expects that the requirements of the Consumer Duty will apply to the presentation of this information for consumers, but we ask the FCA to continue to support struggling borrowers by reviewing the information published by firms regarding income and expenditure assessments to ensure that customers are presented with relevant and easily understood guidance.

Mortgage specific proposals

Q18: Do you have any comments on the increasing balances proposals?

MSE supports a move to leverage higher expectations on firms for considering the overall and ongoing impact of increasing balances – and that it should not only apply to second charge mortgages.

Q19: 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?

MSE is pleased to see measures included to ensure that customers in any amount of payment shortfall receive timely and prescribed information that will help them to make quick, informed decisions. We hope that in practice, this will prevent struggling borrowers from falling into further difficulty and encourage them to engage sooner.

Q20: Do you agree with our proposals to amend the guidance in MCOB 13.3.4DG?

Q21: Do you agree with the factors we propose a firm considers when determining whether capitalisation is appropriate?

Q22: Do you have any comments relating to determining the affordability of future capitalised payments?

MSE supports the move to enable capitalisation of payment shortfall where this may be in the consumer's best interests. The proposed factors to be considered and affordability considerations are logical, though MSE will continue to engage with the FCA on this if we receive evidence that these appear to be unreasonably prohibitive to struggling borrowers for whom this would be an option in their best interests.

Q23: Do you agree with our proposals for firms to ensure that forbearance arrangements remain appropriate?

Q24: Do you agree with our proposed guidance on what we consider to be reasonable steps?

As before, MSE largely supports this proposal but will continue to engage with the FCA on whether firms are deemed to be meeting these objectives (and those of the Consumer Duty) in practice and through their policies.

Q25: Do you agree with our proposals to provide additional guidance at MCOB 13.3.4CG to include taking account of wider indebtedness?

MSE is broadly supportive of higher expectations that firms consider wider indebtedness and the context of other financial commitments. It's imperative that arrangements take these and other living expenses into consideration so that the borrower is not left in an unsustainable position as a result of an arrangement.

Q26: Do you agree with our proposal for firms to share income and expenditure assessments with customers where possible?

MSE has heard from mortgage customers who have dropped out of receiving help and forbearance due to lengthy and repetitive customer service processes that force them to repeat their (often difficult) circumstances to different agents, teams and parties. This also echoes findings in the FCA's own studies. Therefore, we expect that making this information available should also help customers access other forms of help and support from other providers and relevant advisors.

It would, however, be helpful to clarify where this may not be possible, so we can assess whether this caveat is necessary. Ideally, a customer should always be offered a copy of an income and expenditure assessment if this is carried out.

MoneySavingExpert (MSE)

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