

Consultation response

# **FSA Mortgage Market Review: Arrears and Approved Persons**

April 2010

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Shelter is a national campaigning charity that provides practical advice, support and innovative services to over 170,000 homeless or badly housed people a year. This work gives us direct experience of the various problems caused by the shortage of affordable housing across all tenures. Our services include:

- A national network of over 40 advice services
- Shelter's free housing advice helpline which runs from 8am–8pm
- Shelter's website ([shelter.org.uk/getadvice](http://shelter.org.uk/getadvice)) which provides advice online
- The government-funded National Homelessness Advice Service, which provides specialist housing advice, training, consultancy, referral and information to other voluntary agencies, such as Citizens Advice Bureaux and members of Advice UK, who are approached by people seeking housing advice
- A number of specialist services promoting innovative solutions to particular homelessness and housing problems. These include Housing Support Services which work with formerly homeless families, and the Shelter Inclusion Project, which works with families, couples and single people who are alleged to have been involved in antisocial behaviour. The aim of these services is to sustain tenancies and ensure people live successfully in the community.

We also campaign for new laws and policies – as well as more investment – to improve the lives of homeless and badly housed people, now and in the future.

## Introduction

We welcome this consultation. A stronger regulatory stance on arrears and repossessions is long overdue. The FSA's thematic work and our own casework and research have repeatedly shown instances of lenders failing to forbear and treat struggling homeowners reasonably, particularly in the sub-prime sector.

We are concerned that a rise in interest rates and the effects of unemployment will mean that arrears remain widespread throughout 2010-11. In this context, regulation must ensure that struggling borrowers are treated fairly.

## Key recommendations

We recommend that:

- The proposals must be implemented as soon as possible to improve outcomes for the many thousands of borrowers who are likely to struggle in 2010-11. The FSA must hold true to its commitment to 'move quickly'.
- The FSA needs adequately resourced and stringent monitoring and enforcement procedures if the proposals are to be effective. Some of the proposals on arrears management handling do not go far enough – we would like to see even tougher rules proposed for MCOB 13.

## Q1: Do you agree with our proposal to clarify our requirements to prohibit lenders from levying an arrears charge where customers have a performing arrangement to pay in place?

We agree with this proposal. Where a borrower has contacted the lender, reached a repayment agreement and stuck by it, monthly arrears charges are simply indefensible. They are an arbitrary charge and undermine the borrower's ability to get out of debt and rehabilitate their mortgage account.

Alongside clarifying this rule for the future, the FSA must run more publicity campaigns to encourage people to make complaints and seek redress if they have been unfairly charged.

The new rule is intended only to apply to 'performing' arrangements. However, borrowers in arrears can often have sporadic repayment patterns, particularly if their income is irregular and there are other priority debts to service. An arrangement may be in place but may be unintentionally breached for any number of reasons. It does not seem fair to penalize this group with additional monthly charges, particularly if the charge does not reflect any real administration cost. Lenders will also need to use a consistent definition of what makes an 'arrangement', given that over half of accounts in arrears have no formal arrangement or concession in place.<sup>1</sup>

Only applying this rule to customers with a performing arrangement may also prejudice borrowers who have tried to arrange a repayment plan but have encountered problems with uncooperative lenders. For example, in 63% of a sample of repossession cases at courts, the lender had not offered a repayment plan.<sup>2</sup> In 15% of the same sample, a repayment plan was offered but it was not affordable. The rule should apply to all borrowers who have made reasonable efforts to reach an agreement.

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<sup>1</sup> MLAR STATISTICS : March 2010 edition, Financial Services Authority 2010

<sup>2</sup> *Turning the Tide*, AdviceUK, Citizens Advice Bureau & Shelter 2009

The consultation suggests that some monthly charges may still be levied where a genuine administration cost is accrued, such as where payment is made other than by direct debit. Again, this would unfairly prejudice borrowers with irregular income patterns, or who can only pay by cheque. We recommend that the FSA publishes its review of charging structures in full and sets out clearly the actual cost of administering payments, along with unambiguous guidance on what increase on these costs would be a disproportionate charge.

## **Q2: Do you agree with our proposals to convert current MCOB guidance to rules?**

We have long argued that lenders should consider all the options before repossession and that court action must be a last resort. Whilst it is right that lenders treat each case individually, and to some extent tailor their approach accordingly, customers have a right to be offered a range of options before possession proceedings are started. Making guidance into rules will crystallise this, and we strongly agree with the FSA's new, tougher approach. We particularly endorse the view expressed at paragraph 4.9 that 'this proposal will help ensure that firms are adopting a reasonable approach to borrowers in payment difficulties in practice and not just including these requirements within their policy and procedures'.

However, there are some additional, specific areas which we feel could be strengthened:

- Lenders should be required to signpost borrowers in difficulty to, and where necessary make referrals to, sources of free, impartial advice. This could be included under MCOB 13.3.2.
- Lenders should be required to make their arrears policies available to the FSA, to customers and to advisers. This would increase transparency and give all parties a clearer idea of what to expect.
- Legislation has recently been passed that will protect tenants of borrowers from short notice eviction if the property is repossessed due to mortgage arrears. The FSA should require lenders to make enquiries to establish whether there are any tenants in the property and liaise with them accordingly.
- Loan modification, such as the alteration of an interest rate or an agreement to pay less than contractual monthly payments, should be listed as an option under 13.3.4.

Overall, we are disappointed that the FSA has not been more radical in its approach to MCOB 13. Even with the clearer rule based approach, clarification and explanation of the rules may still be required. For example, the current Council of Mortgage Lenders' industry guidance on MCOB 13 and treating customers in arrears fairly is a useful interpretation of the rules, but would not be needed if the rules themselves were self explanatory. We also urge the FSA to ensure that its rules and guidance are complimentary to and consistent with other legal and good practice measures, including the pre-action protocol and industry guidance.

Moreover, the consultation contains no detail as to how the FSA will improve its own practices to enforce the terms of the revised rules to an adequate and universal standard. Greater sanctions and simpler routes of redress are required - for example not allowing lenders to charge any costs to the borrower when it can be demonstrated they did not treat the customer fairly.

## **Q3: Do you agree that regard to government schemes should be included as a potential forbearance option?**

Yes. Alongside reference to applicable government schemes - such as the Mortgage Rescue Scheme and Homeowner Mortgage Support scheme - MCOB should explicitly require that lenders take account of state help via benefits (Support for Mortgage Interest) or private mortgage protection insurance and be willing to extend forbearance where eligible borrowers are awaiting payments from these. This should mirror part 6 of the mortgage repossession pre-action protocol

Where a firm is not directly participating in a government scheme, such as Homeowner Mortgage Support, they should be required to offer an equivalent forbearance option.

**Q4: Do you agree with our proposal to use guidance to clarify our current requirements prohibiting the inclusion of arrears charges and accrued interest on the charges within ERCs?**

We agree.

**Q5: Do you agree with our proposals to implement record-keeping requirements for telephone calls?**

Yes, we welcome the proposal that firms will be obliged to record all arrears handling telephone calls, and to retain these files for three years. Recordings of telephone calls are an essential tool for monitoring how well staff are dealing with customers in arrears - how sympathetically they treat customers, how effective their communication of key information is, and what range of options they are offering.

The FSA should review quality of telephone advice on a regular basis, and publish reports on its findings.

**Q6: Do you agree with the extension of the period of all arrears records from twelve months to three years?**

We agree that, given the exceptionally poor handling of some arrears cases, extended record keeping is necessary to improve monitoring in the future and provide a clear audit trail to any borrowers seeking redress for unfair treatment.

**Q7: Do you agree with our proposal to clarify our current requirements for borrower payments to be allocated to paying off arrears before charges?**

We agree that clearing the arrears should always take priority over charges, and that payments from borrowers should be allocated to reflect this. As a matter of both principle and fair dealing, arrears charges should not be added to the mortgage account, and payment should be deferred until the borrower has brought the account into credit or until sale of the property has taken place.

We have no comments on Q8 - Q10. We do not propose to respond to Part 2 of the consultation regarding proposals to extend the Approved Persons regime, but we are broadly supportive of this extension.

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