Further proposals to support mortgage borrowers impacted by coronavirus.

BSA response to FCA Consultation

Restricted
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Building Societies Association

Introduction

The Building Societies Association (BSA) represents all 43 UK building societies, as well as 6 credit unions. Building societies have total assets of £420 billion and, together with their subsidiaries, hold residential mortgages over £330 billion, 23% of the total outstanding in the UK. They hold over £290 billion of retail deposits, accounting for 19% of all such deposits in the UK. Building societies account for 38% of all cash ISA balances. They employ approximately 42,500 full and part-time staff and operate through approximately 1,470 branches.

The BSA welcomes the opportunity to respond to this consultation on proposed further support for mortgage customers impacted by the coronavirus. The building society sector responded quickly and proactively to support borrowers at the onset of the current crisis. The sector has been pivotal in providing confidence, reassurance and support to an unprecedented number of borrowers facing financial difficulties within an incredibly short period of time. Our members were supportive of FCA guidance published in September which encouraged a return to BAU tailored forbearance. Whilst we have not seen evidence that further blanket deferrals are necessary our members will support these proposals in a time of national crisis. Our response has been prepared in consultation with a wide range of our membership. Given the extremely short deadline for response we have outlined our thoughts at a high-level and are happy to follow up with the FCA if more detail is required.

General Comments

As we understand the draft guidance, if a customer is granted an initial payment deferral of up to 3 months prior to 31 January 2021 they would be eligible for a further 3 month deferral following the expiration of the guidance. In practice, this means that some payment deferrals may still be in place in the summer of 2021. This represents a marked shift from all previous guidance, we believe that in line with previous guidance that a payment deferral should only be granted whilst the guidance is in force. Given that Government support schemes have been extended for one month only, this policy seems inconsistent.

If the FCA decides to proceed on the basis of offering all customers up to 6 months deferrals the guidance needs to be clear on how firms should facilitate this. As with previous guidance, we assume for those yet to take a deferral firms would be required to contact any customer before their initial 3 month deferral expires, the customer would then decide if a further deferral is needed. Those who have already taken a deferral would apply and simply receive an exit communication as per previous guidance.

The FCA should be clear that any potential deferral beyond 31 January 2021 must be consecutive and without the ability to resume payments and request a second 3 months at a later date. The consumer messaging on the FCA website remains silent on this, it would be helpful if this made explicit.

We do not believe that further blanket deferrals are necessarily appropriate in all circumstances, rather, we believe that borrowers should receive tailored support for their individual circumstances. This should be part of a package of measures. We continue to urge Government to revisit safety net schemes such as Support for Mortgage Interest (SMI) where simple amendments to wait time and eligibility could make it an effective tool in supporting those impacted by Coronavirus.

Our members have been appreciative of the FCA's collaborative work with industry to date. Collectively, regulators and industry have delivered on an unprecedented scale overcoming great operational challenges.

Eligibility

The proposed guidance highlights where customers would be ineligible for a further deferral. We disagree that individuals should be excluded on the basis of having already taken two instances of payment deferrals. Some customers may have taken a shorter deferral as they felt that was all they needed at the time, it seems unfair that they are now be denied. We feel it would be appropriate to allow customers to take an additional deferral even if they have taken 2 previously up to a maximum of 6 months in total.

We would ask that should changes to this effect be included in the final guidance, flexibility to choose and utilise any existing approach is retained for firms. Currently, offering deferrals of mixed lengths may not be possible for some firms without system development.

The requirement in paragraph 3.26 is not clear. It references that 3.25 is not applicable if the customer:

"Agreed an alternative option to a further payment deferral at the end of their initial payment deferral"

This is difficult to interpret, paragraph 3.29 suggests this covers anyone who took a Term Extension on exit. Would a move to interest-only also be classed as an alternative option? It is conceivable that individuals extended their term or agreed a temporary move to interest-only instead of applying for a payment deferral extension previously, their circumstances could change just the same as anyone else. Would it be fair to exclude them? Members tell us that the guidance as currently written would require updating existing processes and the required customer communications could be complex.

The guidance also proposes that those customers who took an initial deferral but then missed a payment should not qualify for a deferral. This seems unfair given that those who had a shortfall prior to their initial payment deferral could still qualify for a further deferral.

Our feeling is that paragraph 3.26 should be removed completely. Creating new cohorts who are not eligible for non-consecutive payment deferrals creates operational complexity and unfair outcomes for customers.

If payment deferrals are permitted where customers had taken a deferral and subsequently missed a payment, clarity is required on credit file reporting. It is important for the integrity of the credit reference process that reporting remains consistent and accurate.

The press release which accompanied the consultation was very clear on the FCA policy intention, clearly highlighting those customers that would be ineligible for a further deferral. However, some of these key messages are not prominent within the guidance. We recommend that the FCA update the guidance to make these key messages absolutely clear.

Retrospection/circling back

We would appreciate clarity on possible retrospective action as detailed in paragraph 2.2. Our understanding is that firms would only be required to revisit cases where a solution has been agreed between the expiration of the previous guidance (31 October 2020) and the start date of the new guidance. For example, a customer who took a 3 month payment deferral that expired on 31 October 2020 or just after and then agreed an alternative solution.

We understand that where firms have granted an additional payment deferral ahead of the new guidance this would be acceptable as long as the other eligibility criteria outlined in the guidance are met.

Scope

Previous guidance was clear on the FCA expectation of regulated firms in respect of unregulated products such as Buy-to-Let (BTL). As such firms equally applied previous guidance to BTL.

During the previous payment deferrals, it was claimed that many landlords did not pass on the intended benefit to their tenants. Although lenders cannot police this, it would be helpful if lenders could have more of a discussion with the landlord prior to granting the deferral. We also suggest that the FCA and Government engage with Landlord Trade Associations to make clear this allowance is to help struggling tenants not to improve the cash-flow of landlords.

Possessions

The updated section on possessions is not clear, we would appreciate some clarity.

As we understand the guidance, it provides that whilst an order for possession that has already been obtained cannot be enforced before 31 January 2021, possession proceedings can be commenced. Furthermore, where proceedings have commenced but an order has not been obtained, they can be recommenced in accordance with MCOB, the Guidance and Pre-Action Protocols.

Members tell us the focus on restart activity had been those cases that were in arrears in March and where there was no engagement or the customer had no ongoing means of making payment or alternative forbearance. Based on the draft guidance, it would seem that these cases could still progress. It would be helpful if you could confirm that our understanding is correct.

Whilst the court service has not made any specific statements regarding possession proceedings, they have stated that they will remain open.

Interest-only maturity cases

The FCA published PS20/11 on 23 October to help with maturing interest-only and part-part mortgages, we are surprised that this is not mentioned in the guidance given that this is also a coronavirus intervention.

We propose that customers who mature prior to 31 January 2021 should be out of scope for further payment deferrals. Under PS20/11 a customer must maintain the interest payments on their mortgage to qualify for a deferral of capital repayment up to 31 October 2021. If customers' in this position take payment deferrals potentially up to 6 months this will erode the equity in their property and defeat the object in delaying for more favourable market conditions. However, firms should retain the flexibility to offer payment deferrals for those customers who choose not to delay repayment of their capital until October 2021 in line with previous guidance.

FCA Consumer communications

Member feedback tells us that customers have often been confused around messaging, we suggest the FCA consider including the following to add some clarity to its consumer facing pages:

- Clarification that borrowers can only apply for a total of six monthly payment deferrals and that there is no difference between a "holiday" and a deferral. (and replacing reference to payment 'holiday' with payment 'deferral' on the consumer pages of the FCA website). It would also be helpful if the FCA explain that if a 2nd deferral is required beyond 31st January 2021 this must be concurrent.
- Where there are joint borrowers, but due to a relationship dispute, lenders can accept the request for a payment deferral from just one borrower.

FCA Retail Lending Forbearance Project

We are aware the FCA are currently seeking detailed information looking at how firms in the retail lending market have responded to the challenges of the current operating environment and are delivering forbearance to customers. We understand that initial letters have started going to the firms involved with the focus of the review being on three areas:

- Forbearance customer journeys
- Automation processes
- Operational readiness

Given that firms will need to update policy and process according to final guidance the FCA might want to consider extending the deadline for this information. The FCA should ensure that firms are not in a position where they need to allocate further resource to potentially update and resubmit information in the near future.

Conclusion

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