Financial Services Consumer Panel
AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

Telephone: 020 7066 9346

Email: enquiries@fs-cp.org.uk

Mortgage Policy Team
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

25 July 2023

By email: cp23-13@fca.org.uk

Dear Sir / Madam,

Financial Services Consumer Panel response to CP 23/13 Strengthening Protection for Borrowers in Financial Difficulty: Consumer Credit and Mortgages

The Panel welcomes the opportunity to respond to FCA's consultation on strengthening protection for borrowers in financial difficulty (BIFD) by incorporating aspects of the Tailored Support Guidance (TSG) into the FCA's Handbooks for consumer credit (CONC) and mortgages (MCOB). It has long been a priority for the Panel that FCA should make its expectations on the treatment of borrowers in difficulty permanent and more binding.

The benefits of the TSG – for consumers and society

The speed with which the TSG was enshrined in regulations to cope with the impact of the pandemic delivered benefits to consumers as well as to the economy and society as a whole. Support along the lines of the TSG was always needed and it was welcome that during the pandemic it finally materialised. Consumers were offered a range of support during this period of fluctuating incomes and economic uncertainty and this may have contributed to fewer needing debt advice. The bulk of these consumers have now returned to normality and are able to service their debts properly or are adhering to their TSG agreements. Some have paid off the outstanding sums.

The Consumer Duty due to come into force in August this year emphasises good outcomes for consumers. The incorporation of the TSG into CONC and MCOB gives firms - permanently - a variety of tactics that they are expected to use to help consumers who present with credit or mortgage debt

repayment difficulties and help firms meet the expectations as outlined in the Consumer Duty.
Worries about debt have been shown to impact consumers' physical and mental health[1] and, by giving firms the tools to offer tailored support to mitigate the impact of debt, it's possible that society benefited by not having as many people present with these symptoms to the NHS during the pandemic, when it was already stretched to capacity. The economy also benefited in that, all other things being equal, consumers were able to resume credit again far quicker than they would have been able to otherwise, contributing to Gross National Income.

Why now is a crucial time to make the TSG permanent

The post COVID economic recovery has been interrupted by the cost-of-living crisis, higher energy bills and rising interest rates. Food inflation, at 19.2%[2], is at its highest for many years and domestic energy costs rose during the winter period because of the Russia Ukraine War. These factors have pushed consumers' finances to the brink once again and it is timely that the FCA should be looking to strengthen protections for BIFD. Just as Covid conclusively demonstrated that TSG-style support was needed, these subsequent economic challenges show it needs to be made permanent.

Stepchange research showed that 25% of consumers had £20 a month or less in disposable income after paying for essentials[3] and with the Bank of England expecting inflation to start declining this year and to only reach near target levels by the end of 2024[4], it is likely that interest rates will remain high for some time. In these circumstances, it is clear that a permanent support mechanism from financial firms will help reduce consumer harm.

Monitoring consumer outcomes

The recent HM Treasury announcement of an arrangement with lenders who cover over 85% of the mortgage market to offer additional support to mortgage payers who face steep increases in their monthly payments[5], occurred during the drafting of this response. The FCA subsequently

[1] For example: https://moneyandpensionsservice.org.uk/wp-content/uploads/2021/03/economic-impact-of-debt-advice-main-report.pdf
[2] https://www.ons.gov.uk/economy/inflationandpriceindices/articles/costoflivinginsights/food#:~:text=The%20annual%20inflation%20rate%20for,with%2019.2%25%20in%20March%202023.
[3] https://www.stepchange.org/media-centre/press-releases/client-debt-levels-increase-2022.aspx
[4] https://www.bankofengland.co.uk/monetary-policy-report/2023/may-2023
[5] https://www.gov.uk/government/publications/mortgage-charter

announced handbook changes to enable some of the provisions of the Mortgage Charter, introduced under special powers to avoid the need for consultation. We understand work is ongoing on further measures that might be needed to facilitate other parts of the Charter.

This rapid action is cautiously welcomed by the Panel but it contributes to a highly complex environment for consumers and lenders, which will test firms' training and communications capabilities, and consumers' expectations and understanding. The market now needs to be monitored extremely carefully to ensure that there are no unintended consequences to the detriment of consumers. Additionally, consumers who have mortgages with lenders who are not signatories to the Charter will have to rely on the TSG. We think the FCA needs to act with greater urgency and focus to implement this monitoring than is suggested by para 1.20 of the Policy Statement[6].

In particular, the Panel urges FCA to:

- Monitor how firms which are signatories to the Mortgage Charter present and deploy the Charter's provisions alongside those already mandated by FCA under the TSG.
- Monitor activity to ensure that above all the Consumer Duty outcomes and the "best interests" provisions in MCOB guide firms' interactions with consumers. This will be key to sensible management of any "precautionary" requests from consumers who are not in difficulty.
- Make sure that firms are staffed at appropriate levels with trained staff to deal with this pending crisis.
- Monitor consumer reaction and understanding of their rights and lenders' obligations by ensuring firms collect data on proactive consumer requests for different types of support, the support proactively offered by firms and the support ultimately implemented. Alongside this, FCA should monitor complaints.
- Commit to a review of the overall coherence of the support available to customers before the end of 2023.

The Panel believes that it is important that the FCA get on the front foot and test different consumer scenarios to validate how these arrangements – under the Charter and the TSG - could support consumers facing a steep rise in their monthly payments and whether it can deliver good outcomes. We also suggest that the FCA proactively engages with consumer groups and

[6] "As part of our supervision of firms, we will engage with them and request data to assess how they are making use of these changes, and the outcomes for customers. In due course we will consider whether any updates are required to firms' regulatory reporting." (PS23/8 para 1.20)

debt and advice agencies to seek insight and evidence of how the TSG has impacted the volume, timing and quality of referrals.

Guiding principles for the TSG

This Panel welcomes the measures set out in this consultation and some of our broad principles are set out below. We note that these principles are very much in line with the key principles in ISO 22458 on Consumer Vulnerability and we would recommend aligning with this standard as it is recognised best practice.

1. Consumers should be able to easily access information on the different types of support a firm could offer, and the benefits they offer. For example, in a prominent place on their website, on letters, bills and information in branches, bearing in mind the communication needs of different consumers. For example, the needs of those who are digitally excluded or who have a visual or cognitive impairment. Personalised support should be available through a range of channels.
2. Solutions offered to consumers should be tailored, flexible and responsive to the needs and difficulties faced by the individual.
3. Solutions should be sustainable and reviewed at appropriate intervals to ensure that they are still meeting needs/fit for purpose and whether any changes need to be made
4. Where a consumer has managed the new arrangement well, their credit file should not be adversely impacted and reflect that they have adhered to the new forbearance arrangement and should not just indicate arrears or default.
5. Consumers should be provided with clear information about the implications of their arrangement both in terms of overall costs, level of indebtedness, as well as the impact on their credit file
6. Consumers in financial difficulty should be signposted to free and independent debt advice services as early as possible

We also note a clause in the original TSG which asked for consumers to be put back in the same position they would have been if there was not a delay on the firm's side in implementing a forbearance arrangement[7]. This clause has not been transposed to MCOB. We support the intention of this clause and believe that the current position should be reviewed. If the view is that this clause should not be in CONC and MCOB rulebooks then it should remain in active guidance.

[7] https://www.fca.org.uk/publication/finalised-guidance/mortgages-and-coronavirus-tailored-support-guidance.pdf para 2.12

Our response to specific questions posed in the consultation is set out in Annex A below.

Yours sincerely,

Helen Charlton
Chair, Financial Services Consumer Panel

Annex A – answers to consultation questions

Q1. Do you agree with our proposed changes to the scope of: a. CONC 5 & 7? b. MCOB 13?

The Panel agrees that to reduce consumer harm the Tailored Support Guidance (TSG) should be added to CONC 5 and 7 and MCOB 13 to offer consumers better protection and also to assist and enshrine better standards in dealing with vulnerable people. The FCA's own Financial Lives research shows that 47% of adults showed 1 or more characteristics of vulnerability[8] and 1 in 20 more could become vulnerable at any time. Incorporating the TSG into the Handbook means standards and expectations are clear and consistent over time, reducing the regulatory burden of having to devise a scheme when an economic downturn or other crisis occurs.

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?

The Panel agrees wholeheartedly with this requirement. It is essential that financial services firms hold themselves to high standards by reviewing the work they have done in supporting consumers in financial difficulty and ensuring that it has been effective in reducing consumer harm. We agree that the review period should not be prescribed but firms should make sensible judgements as to when it is right to validate whether better outcomes for consumers have been realised. This review should also look specifically at the outcomes for vulnerable consumers in line with Q3 below.

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?

We agree with the proposals about the fair treatment of vulnerable customers. In particular it is recognised that vulnerability can be short term, long term or sporadic and a consumer's circumstances can change rapidly or fluctuate over time due to life situations. Firms must ensure that their practice around vulnerability is robust under such scenarios. There should be an evaluation of whether aspects of the Vulnerable Consumer Guidance need to be incorporated into the handbook alongside the TSG to give its provisions equal force.

---

[8] https://www.fca.org.uk/data/financial-lives-2022-early-survey-insights-vulnerability-financial-resilience

We would like to draw the FCA's attention to BS ISO 22458 Consumer Vulnerability, which could be used by financial services firms to help them meet vulnerability and consumer duty obligations. It is referenced by other regulators (e.g. Ofgem and Ofwat) and has been widely taken up by utility providers.

The standard supports the FCA's Vulnerability Guidance and was developed by international experts, including industry and consumer stakeholders. It provides detailed good practice, guidance and requirements about how to:

- design and deliver inclusive services
- understand and plan for vulnerability
- identify consumers in vulnerable situations
- provide meaningful, flexible and tailored support.

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?

Overall, we agree with the additions to the list of forbearance options. In terms of CONC 5D on overdrafts, the TSG mentions the freezing of interest **and charges** and we note that the latter is not mentioned in this consultation. We would like to ensure that this is specifically added, even if it is implied. We note that write-offs are not expressly included in the list of forbearance options and it may be useful to do so as a prompt for firms when dealing with very vulnerable people, and when they do not want to spend resources chasing unrecoverable sums.

In terms of MCOB 13.3.4AR – although it states that the list of proposed remedies is not exhaustive, no mention is made of the capitalisation of the sum outstanding and extending the loan term. We should like these explicitly mentioned here, although we note that capitalisation is referred to later in this consultation at para 3.77-3.84 (and Q21-23 below).

Furthermore, we would add here that whichever channel a consumer chooses to interact with the firm to discuss forbearance options, they should be offered the same tailored support options.

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?

The Panel agrees with the proposed guidance on the transparency and accessibility of forbearance options. Consumers should be made aware that tailored support is available if they are experiencing difficulties, and how to access that support, at all relevant touchpoints in the consumer journey, with consideration given to those who are digitally excluded or who have specific communication needs (e.g. visual impairment). For example, consumers could be made aware of the availability of tailored support online, on web forms, in letters, on bills or statements, in published materials in branches or verbally when speaking with customer service staff.

Furthermore, whichever channel a consumer chooses to interact with the firm to discuss forbearance, they should be offered the same range of tailored support options. The transparency should also extend to ensuring consumers understand the implications (positive or negative) of accessing forbearance arrangements, for example any impact on their credit score.

Finally, firms should monitor the profile of customers engaging with them in search of forbearance and support, and carrying out recommended actions, to make sure communications and channel strategies are not unintentionally under-serving any groups of consumers who may be in need of assistance. A particular challenge might be to be creative in finding solutions to engage with younger less experienced financial consumers. Some will not be attracted to the standard debt advice agencies and may prefer to engage with an app.

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?

We firmly agree with these proposals which aim to ensure that consumers receive debt guidance a lot earlier once problems arise and are made aware of the statutory Breathing Space scheme. This is of importance to both credit products and mortgages. We particularly agree with the obligation on firms to explain the benefits of debt advice to consumers. Our remarks under Q5 about ensuring communications and engagement approaches aren’t leaving any customer groups (eg younger borrowers) behind apply here too.

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)? 29

Consumers have a right to receive timely, clear and understandable information on their debts and therefore we welcome these additions. In terms of the period of consideration, we strongly agree consumers should be given a reasonable time: they have to get to grips with the total amount of debt outstanding and the credit file implications. It is difficult to prescribe what that should be as the balance between moving to implement much-needed support and ensuring customers understand the implications might be different in different situations. But we think FCA could indicate that anything less than 7 days could generally be “unreasonable” and make a similar indication of a maximum reasonable period. This will need careful monitoring, not least because some provisions of the Mortgage Charter could result in consumers making multiple changes to their contract as interest rates change in the run-up to the end of their current deal.

It is right that the proposals include an instruction for firms not to remove overdraft facilities if it will cause ‘financial hardship’. This fear has long prevented overdraft customers from stepping forward. Note that in CONC 5D when listing the potential drivers for consumers having overdrafts consideration must also be given to the customers who have funded a capital expenditure via an overdraft because the firm has denied them a loan.

In terms of MCOB 13.3.4 – we would further emphasize that it is important for consumers to see the benefits of stepping forward for help and currently this is not demonstrated where they find that their credit file does not show that they have made a new arrangement with the firm but shows a default. This would be the same as if they had not made an arrangement. The Panel has already communicated this to the FCA in its response to the FCA’s Credit Information Market Study interim report[9].

Q8: Do you have any comments on these consequential amendments: a. in CONC? b. in MCOB?

We agree with these changes. The addition of the Vulnerable Customer Guidance to CONC 5 is welcomed by the Panel as firms should be reminded of the guidance and key points, wherever relevant.

The Panel welcomes these consequential amendments but would emphasize that it is really important for firms to understand their customers in terms of those at risk of arrears. Some consumers have very little disposable income after paying for necessities and manage this ‘tight’ financial position well, because it has been their circumstance for some time. Such consumers may not welcome any communication from firms “pointing out the obvious”. Then there are other consumers who may have had a large disposable income surplus and have suddenly had to adjust to a change in circumstances – they would be less familiar with managing their finances in such circumstances and would require help. Firms should think very carefully

[9] https://www.fs-cp.org.uk/sites/default/files/20230224_final_fscp_response_-_cims_interim_report.pdf

about how they propose to identify consumers who are at risk of arrears, and deploy differentiated approaches. BS ISO 22458 includes good practice in this area. Firms should monitor the effectiveness of different engagement approaches and ensure no group is being disadvantaged in terms of access to support. The Consumer Duty outcomes around understanding and support require firms to recognise that people's communications preferences and behaviours change when they are under pressure and in response to firms' actions, so pre-existing communications preferences might not be sufficient.

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 Panel agrees that whilst forbearance arrangements are in place and the customer is meeting these obligations, firms must reduce, waive or cancel any further interest and charges to ensure that the level of debt remains stable. The Panel supports the intention here which is to ensure that customers' balances do not escalate unmanageably. We would only caution that where a customer's income improves, although in most circumstances the customer may be able to pay more towards their debt, sometimes this may not be the case given an increase in other outgoings. We would like to ensure that a rounded view of the customer's financial position is taken before any adjustments are made.

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

We agree with introducing guidance to help firms determine what is a reasonable charge for their administrative costs associated with supporting customers in financial difficulties.

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

The Panel agrees that repayment arrangements should be sustainable and clear guidance on what this means should be included. At 3.54 mention is made of the 'essential' costs of a customer. We encourage FCA to specify the use of the Standard Financial Statement or an equivalent as highlighted in para 3.58. That would, for instance, include essential transport and childcare expenses where these apply. This action will ensure that firms' forbearance arrangements are consistent and far more in line with the advice of debt advice agencies, ensuring that customers do not receive conflicting advice.

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

The Panel agrees that reviews at appropriate intervals is an important step in ensuring that forbearance arrangements remain appropriate. Firms should also make use of business and industry news to understand what is happening in different sectors where their customers work. Given the short term, sporadic and fast-changing nature of many vulnerabilities, firms must make it easy for customers to report any changes in needs and trigger a review once a forbearance arrangement is in place.

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

We agree that income and expenditure assessments should be done to the Standard Financial Statement (SFS) standard or equivalent.

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?

The Panel agrees with these proposals. The ability of customers to share the income and expenditure record from the firm with a debt advisor and/or other lenders to ensure alignment in the strategy to improve their financial health. This will ensure all institutions act on a common view of the overall circumstances of customers in debt and do not unfairly favour their own debt.

Q15: Do you agree with our proposals on repossessions?

Repossessions should be an absolute last resort and therefore the Panel agrees with the amendment and the decision to expand this to include goods and vehicles. It is mentioned in the guidance that firms should have regard to the value of the asset if a forced sale is to occur. The potential depreciation of the asset (for example in the case of a car) could potentially make firms behave perversely in terms of not taking care to try to make a reasonable arrangement with the customer to avoid repossession.

Q16: Do you agree with our proposals on voluntary termination?

The Panel agrees with the proposals on voluntary termination. All communication on this option to consumers should advise them that it is recommended that they should to seek legal advice or even debt advice before making the decision, although we accept that the former may be an unrealistic option for many consumers.

Q17: Do you agree with our proposed amendment to CONC App 1.2?

The Panel agrees with this amendment to ensure accurate APRs are reflected in borrowers' documentation. In terms of second charge mortgages mention is made of using simple interest rather than compound interest as a forbearance measure. We would like to see this explored for first charge mortgages as a measure to help consumers when other initiatives will not lead to better outcomes

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

No further comments other than what has already been mentioned at Q9 above.

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?

The Panel agrees that information about missed payments or shortfalls should be supplied to customers more frequently to ensure that they are kept abreast of their financial position. Such information should be in plain English and sent to the customer via channels already agreed.

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

We agree that capitalisation is an important option for some consumers when they have a payment difficulty. Clearly in some cases paying interest for a longer period of time is not in the consumer's interest and therefore firms have to be clear to consumers the implications of capitalisation. If the circumstances of the consumer improve then of course they would be able to pay more and reduce the time period which would save them interest. However, consumers are mindful of how these agreements appear on their credit file and how long it will take before they can borrow again.

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

The Panel believes that the factors proposed for consideration about capitalisation are appropriate.

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

Where property prices are higher, consumers are purchasing properties at an older age, especially where they do not have family help. This social change and the fact that retirement age is increasing should be considered when considering capitalisation options.

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

The Panel agrees with the steps outlined 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?

The Panel agrees with what is proposed as 'reasonable steps', however, in reality this will vary from customer to customer. Tailored support implies that support will be flexible and responsive to the circumstances and needs of the individual. Therefore, firms must ensure that their systems and processes have sufficient flexibility to cope with different needs and changing circumstances. If nothing material has changed for the consumer, then we believe that the arrangement should be renewed.

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

Yes, we agree with proposals to take into account wider indebtedness and would add again that priority debts as agreed with debt advisors should form part of this – such as Council Tax and Child Support.

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

The Panel sees this as an essential part of the communication between borrowers and firms. The question says "where possible" and currently we cannot envisage a circumstance where this could not be shared.

Q27: Do you agree with our proposal to extend the rule in MCOB 13.3.9R to include customers who have or may have payment difficulties?

As stated earlier, although the Panel agrees with the broadening of scope to include customers who may have payment difficulties, please note our points under Q8 above where we argue for differentiated strategies, e.g. to recognise that some consumers deal with tight budgets and continue to meet their obligations.

Q28: Do you agree with our proposed clarification on recording video calls in MCOB 13.3.9R?

The Panel agrees with the proposed clarification to allow the recording of video calls with the customer's permission. These records must be kept securely and in line with current data privacy laws. It is worth noting that many consumers of colour may refuse video calls due to fears of adverse treatment based on race or other physical appearance. Unconscious bias could occur and we would want to see firms monitor and review outcomes of those whose arrangements have been made via video calls to ensure that customers are treated fairly.

Q29 Do you have any comments on the proposed amendments to MCOB 13.8

We agree that it is sensible to amend the scope of MCOB 13.4.1R and 13.5.1R to include home purchase plans. However, we note that many of the suggested remedies such as freezing or reducing interest charges, or switching from compound to simple interest will not be of any use to customers of home purchase plans as they do not pay interest. There is a need to ensure that forbearance options are appropriate for these customers.

Q30: Do you have any comments on the consequential impacts to: a. MCOB 14? b. MCOB 15?

The Panel wishes to comment on the incentives for Peer-to-Peer lenders to not support customers in financial difficulty because they have the ability to claim tax relief on unpaid loans which allows them to offset the loss they suffer on a loan against the interest they receive on other peer-to-peer loans. Incentives to provide support may need to be looked at here.

Panel comments on Cost Benefit Analysis

Para 154 - Reduced Impact on Credit files - the Panel would agree that there is a reduced negative impact but it is marginal because the scoring system for credit scores is biased towards negative information.

Para 170 – The calculation of the break-even analysis takes into account the increase in products brought into regulation during 2018 to 2021.