FS 21/2 Approach to Repossessions: Updated Tailored Support Guidance for firms - Feedback on draft guidance for mortgages and consumer credit

January 2021

Contents

1 Summary

1.1 In November 2020, we announced further support for mortgage and consumer credit borrowers experiencing payment difficulties as a result of coronavirus (Covid-19). This included guidance for firms on the treatment of all mortgage customers facing repossession, and of consumer credit customers facing repossession as a result of circumstances relating to coronavirus. The guidance set out that firms should generally not enforce mortgage repossessions or terminate regulated agreements and repossess goods or vehicles that the customer needs before 31 January 2021. On 13 January 2021, we published draft guidance which set out our proposed approach to repossessions from 31 January 2021.

1.2 For mortgage customers, we proposed to extend our existing guidance on repossessions so that firms should not enforce repossessions before 1 April 2021 unless there are exceptional circumstances (such as a customer requesting that the proceedings continue). This approach takes account of the current coronavirus situation and the government's tighter coronavirus-related restrictions which mean that consumers could experience significant harm if forced to move home at this time as a result of repossession proceedings. We also recognise that there are government bans on evictions in some nations, which could prevent firms from enforcing home repossessions.

1.3 For consumer credit customers, we proposed that firms should be able to terminate regulated agreements and repossess goods and vehicles from 31 January 2021. However, this should only be as a last resort, and subject to complying with relevant government public health guidelines and regulations, for example on social distancing and shielding. Importantly, firms would also be expected to consider the impact on customers who may be vulnerable, including as a result of the pandemic, when considering whether repossession of goods or vehicles is appropriate.

1.4 Our proposed approach reflected the different risks and harms that customers with goods or vehicles on credit are likely to face compared to those who are at risk of losing their home.

1.5 We wanted to act quickly to protect consumers in these difficult times and provide clarity to firms about our expectations of how to treat customers facing repossessions. For that reason, we did not formally consult on the proposals or produce a cost benefit analysis. To do this would have caused a delay that would have been prejudicial to the interests of consumers. However, we invited comments on our proposals and received 18 responses from a range of consumer organisations, firms and trade bodies. This feedback statement summarises the feedback we received on our proposals and our response.

1.6 The updated guidance advances our consumer protection objective and is designed to protect consumers by providing them with ongoing support in the light of the current exceptional circumstances. In developing our approach and considering responses, we have had regard to our consumer protection objective, and our market integrity and competition objectives, in particular considering the different impacts on firms and consumers of the proposals.

1.7 We do not consider our guidance will adversely affect consumers with protected characteristics under the Equality Act 2010.

Summary of changes

1.8 We are now publishing our final guidance which confirms the extension of the current repossession guidance for mortgages to the 1st April as proposed. For consumer credit repossessions, we are also publishing final guidance which confirms the proposed approach but with some changes to clarify our position and to address various issues raised by stakeholders, including around our expectation that firms only commence repossession action as a last resort.

Next steps

1.9 The updated Mortgages Tailored Support Guidance and Credit Tailored Support Guidance come into force on 29 January 2021. Both guidance documents remain in force until varied or revoked.

1.10 Our Payment Deferral Guidance and Tailored Support Guidance for both mortgages and consumer credit remain subject to ongoing review.

2 Key issues and our response

Mortgages

Summary

2.1 Most respondents supported our proposal to extend our current guidance. This included all consumer representative bodies and both trade bodies that responded. One specialist lender and two private individuals argued that we should lift the restrictions to allow firms to enforce repossession.

Issues raised

2.2 While supporting the proposal to restrict firms from enforcing repossession until 1 April 2021, most comments related to what might need to happen after this date. Consumer representatives were concerned that the guidance would need to be extended further should restrictions arising from coronavirus continue.

2.3 Lender representatives, on the other hand, were concerned about the impact on consumers of increasing balances and equity erosion which could mean that further delay leads to a worse financial outcome for the consumer when repossession eventually takes place. They noted that the consumers at risk of repossession in the short-term were those who were in significant financial difficulty prior to March 2020, and who have been unable to make payments since, rather than consumers who were up to date prior to coronavirus.

2.4 Industry responses noted that most mortgage borrowers who were previously up to date with payments, and who took payment deferrals, have been able to resume payments and that the numbers of consumers affected by coronavirus and entering arrears has been relatively limited. Firms are providing these customers with further support including where there is ongoing uncertainty about their ability to pay and these customers are less likely than customers who were in significant financial difficulty before coronavirus to be at risk of repossession in the short-term.

2.5 Both trade bodies asked the FCA to set out our view of the extent to which they should continue to offer forbearance where a customer cannot pay and the circumstances where government support for mortgage borrowers in financial difficulties may be appropriate.

2.6 One specialist lender suggested we allow repossession of security used for bridging finance where a customer is facing a potential sale shortfall or significant erosion of their equity. Two private individuals argued that we should lift the restrictions to allow firms to enforce repossession. One respondent, while not commenting on the proposed extension of our existing guidance, suggested firms should suppress all arrears fees so that these do not hasten repossession.

Our response

2.7 We confirm the extension of our current repossessions guidance such that firms should not seek or enforce a warrant for possession before 1 April unless there are exceptional circumstances. We will keep this guidance under review as the situation continues to develop. Firms should note that government bans on evictions in some nations may also apply.

2.8 Our Tailored Support Guidance sets out our expectations of firms when providing support and considering forbearance to consumers who have exhausted support available under our Payment Deferral Guidance. This confirms that firms should provide support to customers that reflects their individual circumstances taking account of the uncertainties and challenges that many customers are and will be experiencing due to coronavirus. This uncertainty may make it harder for a customer to commit to an arrangement to pay and may mean it is appropriate to delay using long-term solutions, such as changing the type of the loan, until a clearer picture emerges. Where this is the case, firms should offer short-term arrangements where the firm permits the customer to make no or reduced payments for a specified period to give them more time to get back on track. It also sets out our expectations that firms ensure that they keep their customers fully informed and discuss with them the potential consequences of their suspending any steps to enforce repossession. For example, they should explain the effect of remaining in the property on the customer's remaining equity if the amount owed is increasing or the value of the property subsequently falls.

2.9 Our rules in MCOB 13 say that a firm should not repossess the property unless all other reasonable attempts to resolve the position have failed. They also require firms to make customers aware of the existence of any applicable Government schemes to assist borrowers in payment difficulties, and to make use of any Government forbearance initiatives in which the firm chooses to participate if appropriate.

2.10 We recognise the risks of equity erosion from delays to repossession, and that this may be exacerbated where the interest rate charged is higher (such as on a bridging or second charge loan) but we believe that, on balance, the risks of firms enforcing home repossessions, in the current environment, outweigh these risks. Our guidance sets out our expectations that firms keep their customers fully informed and discuss with them the potential consequences of their suspending any steps to enforce repossession. For example, they should explain the effect of remaining in the property on the customer's remaining equity if the amount owed is increasing or the value of the property subsequently falls. Lenders can offer assisted voluntary sales and consumers can choose to voluntarily agree to earlier repossession where it is in their interests.

Consumer credit

Summary

2.11 We received 12 responses to the consumer credit repossessions proposals, the majority of which were from consumer representative bodies. While many of these responses expressed concerns about the proposal to allow repossession of goods and vehicles that customers may need, there was also recognition of the risks to customers of further asset depreciation and increasing debts and therefore that there were circumstances where repossession might be in a customer's best interests.

2.12 Industry respondents welcomed the proposals, noting that it would provide helpful clarity for firms. An industry body also noted that the proposed approach would allow firms to work with customers and reach the best solution for their particular circumstances.

Issues raised

2.13 Most consumer representative bodies expressed concern about the proposal to allow repossession of goods and vehicles that customers may need and suggested that it would be appropriate to extend the current guidance for consumer credit repossessions in line with the approach taken to mortgages. They also suggested that such an approach would mitigate any public health risks associated with repossession activity and reduce the scope for consumer confusion.

2.14 Consumer bodies raised a number of specific concerns including that there may be a risk that some firms would seek to take repossession action too quickly, and that our guidance should be clearer on what repossession 'as a last resort' means in practice. Some responses also suggested the guidance could be clearer on how firms should take account of customer vulnerability in considering whether repossession action is appropriate in the circumstances. Consumer bodies also questioned how we would be able to effectively monitor whether firms were taking repossession action only as a last resort and appropriately considering customer vulnerability.

2.15 Consumer bodies also made various suggestions to ensure that appropriate signposting was provided to customers facing repossession action. This included signposting to debt help or money guidance and voluntary termination rights under the Consumer Credit Act 1974. Some respondents questioned whether repossessions were allowed where a customer is subject to, or eligible for, a payment deferral under our Payment Deferral Guidance. One respondent questioned whether the repossessions guidance applied to logbook lenders and highlighted the potential risk of harm to customers in this sector.

Our response

2.16 We have listened carefully to the feedback from respondents and recognise the concerns that have been raised; on balance however we remain of the view that customers at risk of losing goods or vehicles face different risks and harms compared to those who are at risk of losing their home. In particular, we consider that continuing to restrict repossessions activity for these types of credit agreements may not be in some customers' interests given the increasing debt and potential financial impact of further asset depreciation. We also consider that repossession of goods and vehicles can more easily be undertaken in a covid-secure way and we have been clear in our guidance that firms must follow all relevant government public health guidelines and regulations when taking possession. Finally, we have been mindful of the impact on firms of continued restrictions on repossessions.

2.17 We are therefore confirming the overall approach set out in our draft guidance, which will enable firms to recommence repossessions subject to ensuring customers are afforded appropriate protection in the current circumstances. In response to the feedback received, we have made a number of amendments to the guidance to clarify our policy intention and address stakeholder concerns.

2.18 To ensure firms are clear on our expectation that repossession should only be taken as a last resort, we have set out that firms should be able to evidence that all reasonable forbearance options have been appropriately considered before starting repossession action. We recognise that what is reasonable in any particular case is likely to depend on the particular circumstances, but we would expect firms to be able to demonstrate and evidence what options they have considered before determining that repossession action is appropriate.

2.19 We have also clarified that firms should not commence or continue repossession action where an agreed forbearance arrangement is in place (including under the Payment Deferral Guidance or Tailored Support Guidance). Where a customer fails to engage with a firm despite the firm having made all reasonable attempts to engage with the customer, we have clarified that firms are not prevented from taking repossession action. This is irrespective of whether a customer would have been eligible for a payment deferral under the Payment Deferral Guidance.

2.20 To clarify our expectations of firms when considering customer vulnerability, we have amended our guidance to make it clear that firms should carefully consider the potential impacts on vulnerable customers, including those customers at greater risk of harm as a result of circumstances related to coronavirus, when considering whether it is fair and appropriate to repossess goods or vehicles in a particular case. We have set out that in doing this, firms should consider the wider impact of repossession on such customers, as well as the financial impact. For example, it may be appropriate in some cases for firms to delay repossession action for a short period where customers have an immediate need for use of a vehicle for health purposes. We recognise that what is fair and appropriate will likely depend on the particular circumstances, but our objective is to ensure that firms take account of customer vulnerability in determining whether, when and how to commence repossession action.

2.21 We have also made amendments to the guidance to remind firms of the need to signpost customers to debt help or money guidance, and that they should give customers reasonable time and opportunity to obtain and act upon this before taking action to repossess. For those customers who would be able to voluntarily terminate agreements under the Consumer Credit Act 1974, we have amended the guidance to remind firms that they should make customers aware of these rights where relevant.

2.22 We recognise the concerns that have been expressed about customers with logbook loans who may also be at risk of repossession action. However, these products are not within scope of our repossession guidance given their fundamentally different legal nature. Where customers with regulated credit agreements, including logbook loans, are experiencing payment difficulties as a result of circumstances related to coronavirus, appropriate support is available under our Payment Deferral and Tailored Support Guidance. We expect firms to treat these customers fairly by not rushing to take repossession action and to provide them with appropriate forbearance and due consideration in line with the Tailored Support Guidance and CONC 7.

2.23 To ensure that firms are only commencing repossession action as a last resort and taking into account individual customer circumstances, we will monitor how firms are implementing this guidance and will take action where we see evidence of firms rushing to repossess without providing adequate forbearance (that can be evidenced) or due consideration of consumer circumstances.