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Dear Graeme

Consultation on the Mortgage Arrears Protocol

Thank you for giving the Financial Services Consumer Panel the opportunity to respond to this consultation. We have aired our concerns publicly about how, in the current environment, some consumers face losing their homes because lawyers and householders are largely unaware of the rules the FSA says must be followed before repossession proceedings can be commenced. In light of this we very much welcome efforts to make Judges more aware of the structure to be followed in residential possession claims and, therefore, support the majority of the proposals in this consultation. Our answers to the questions posed in the consultation follow:

Q1. Do you consider a protocol for mortgage arrears cases would be helpful? If so, what do you consider would be the advantages? If not, why not?

We consider the protocol to be a very helpful development because, in our view, it should help the growing number of consumers who find themselves facing repossession proceedings in a fragile mortgage market. We believe the protocol has the correct emphasis on the needs of the borrower, and rightly implants the principle of Treating Customers Fairly into proceedings.

We do have some concern, though, that in certain instances the consultation puts forward an alternative set of regulations to be applied in the Courts to those already in the FSA's Mortgage and Home Finance Conduct of Business Sourcebook (MCOB). This could be potentially confusing for all concerned: homeowners, lawyers and Judges. Our opinion is that the MCOB rules should be the prerequisite requirement for firms and the Protocol should act in addition to that requirement.

Q2. Will the protocol have any impact on your area of business or sector – particularly in terms of benefits or costs?

The protocol is sure to have a beneficial impact on consumers if applied in the appropriate manner. The FSA's Financial Risk Outlook predicted that 1.4m home owners could have problems meeting mortgage repayments this year, which therefore puts many more consumers at risk of having their homes repossessed. The subsequent likelihood of increased activity in the courts would obviously benefit from a consistently applied and transparent protocol such as this one. Keeping repossessions down would similarly reduce the number of repossessed properties coming onto the market, stabilising house prices and having a positive impact on the UK economy overall.

Q3. What sector of the mortgage lender market is likely to be affected by the introduction of the protocol? Can you give details of the size/significance of this sector?

Bearing in mind the precarious nature of the market as it stands at the moment such a protocol is likely to have a considerable impact on the whole market, and in particular those 1.4m home owners who the FSA's FRO predicted could have problems meeting their mortgage repayments this year. Much has been said about the problems in the sub-prime sector but repossessions are certainly not confined to this area and many of the larger lenders show up prominently on the Court figures. Therefore the significance of this Protocol is that it could have a positive impact across the market.

Q4. Do you agree with the scheme of the protocol – ie early intervention when mortgage arrears begin; agreement of instalment payments; assistance to the borrower to gain benefits and manage debt; postponement of proceedings?

We agree with the overall scheme of the protocol, although with the reservations outlined in our answer to Q1. We also have the following more specific points:

With regards to the section in the protocol on 'initial contact' the Panel believes that there should be additional reference made to the 'time order' procedure. This applies to second mortgages – regulated under the Consumer Credit Act – where the Court has powers to allow the borrower to make reduced payments with an appropriate reduction in the interest rate charged to the loan. In our opinion the protocol should require lenders to consider the appropriateness of making a temporary repayment agreement simulating such a time order.

We have some reservations about the non-issuing of proceedings where borrowers have filed a complaint with the Financial Ombudsman Service (FOS). A number of questions need to be answered for this process to run smoothly and not be open to abuse: Who determines whether a complaint has merit? What happens if the complaint is against the broker? What happens if

the borrower is unable to cover the ongoing interest and so the mortgage debt increases, perhaps extinguishing all equity? The most appropriate solution, in our opinion, is that proceedings should not be issued where a complaint has been made to FOS and the borrower is covering the ongoing interest payments. We recommend that this should go directly to the FOS Board for their consideration and that FOS should consider fast-tracking complaints of this nature.

We also believe that, as cited in the protocol, it is particularly important for lenders to advise borrowers to attend their hearing, even in instances where the lender has already reached settlement with the borrower. Otherwise a borrower loses the safeguard of the Judge deciding that a smaller repayment arrangement may actually be more affordable and just than what the borrower had previously agreed.

Q5. What should the sanctions for non-compliance be?

Should there be evidence of non-compliance with the protocol the firm needs to be made to re-follow the set procedure with the borrower. For continuous infractions the District Judge should consider a general adjournment of the possession application with a specific order that costs shall not be added to the mortgage. The firm would also be in breach of MCOB and should be referred back to the FSA for enforcement action.

Q6. Any other comments?

The Panel feels that there is a lack of consumer groups among the consultees. Apart from the Panel we believe that the likes of Which? the National Consumer Council and the Consumer Councils of Wales and Northern Ireland should be consulted in order to get a fully balanced response. At the moment there is a danger that responses will too closely reflect the needs and views of firms.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Adam Phillips', with a long horizontal flourish extending to the right.

Adam Phillips
Vice Chairman
Financial Services Consumer Panel