All Party Parliamentary Group on Mortgage Prisoners

Financial Services Bill – Report Stage

Amendment briefing: Mortgage Prisoners

This briefing contains three amendments which have been tabled for the Report Stage of the Financial Services Bill to help secure a fair deal for mortgage prisoners. The Report Stage will take place on Wednesday 13th January and the deadline for adding names to these amendments is the rise of the house on Tuesday 12th January.

- **New Clause 24 (NC24): An expansion of the scope of FCA regulation to cover all activities associated with owning and managing a mortgage**: This would ensure that people could no longer take out a mortgage with a fully regulated high-street bank and have it sold on to an unregulated vulture fund. It would bring all these activities within the scope of FCA regulation and ensure that the FCA has the powers it needs to protect mortgage prisoners. Andrew Bailey, Governor of the Bank of England told the Treasury Select Committee that an expansion of the regulatory perimeter would allow the FCA to conclusively address the question of mortgage prisoners. He said: "Let me take the example of mortgage prisoners….I have said a number of times, and I have advocated, that the only way that we could conclusively address this question is to change the perimeter….It hasn't happened."
- **New Clause 25 (NC25): Applying a cap to the Standard Variable Rates charged to mortgage prisoners**: This amendment would place a duty on the FCA to introduce a cap on the Standard Variable Rates charged to mortgage prisoners. This would help ensure that all mortgage prisoners are treated fairly and charged fair interest rates. It would stop unregulated firms, inactive lenders and vulture funds from holding mortgage prisoners on Standard Variable Rates of 4% or 5%, costing them thousands of pounds extra each year in mortgage payments. If mortgage prisoners were with active lenders then they could access fixed rates of 1.8% or less. Analysis commissioned by the APPG found that when the mortgages were given, mortgage prisoners were not high risk and if they were paying reasonable rates then their financial position would be much better and the already low level of arrears would be lower. Mortgage prisoners were not irresponsible and are not to blame. It is the treatment by UK Asset Resolution and the sale to vulture funds which have caused the misery which many mortgage prisoners face.
- **New Clause 26 (NC26): No consent, no sale:** This amendment would require consumers to give their consent before their mortgage is transferred to a new lender. Consumers would need to be provided with clear information about the implications of the transfer and the interest rates they would be offered.
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Background

- Mortgage prisoners, including many key workers, have found their mortgages sold on to unregulated firms and vulture funds.
- The FCA has found that there are 250,000 mortgage prisoners – this means that they are stuck with their existing lender and cannot switch or access new deals.
- The largest group of mortgage prisoners are former customers of Northern Rock who were sold on by the Government to vulture funds like Cerberus. Before the sale, UK Asset Resolution told Lord McFall that "by returning ownership to the private sector the option to be offered new deals, extra lending and fixed rates should become available to them". A UKAR spokesman told the BBC that Cerberus had the ability to lend to the former Northern Rock customers and that UKAR believed they intended to do so: "The reply to Lord McFall sent on behalf of the UKAR board of directors was based on information presented to UKAR and the board had no reason to disbelieve this at that time."[1] Customers sold to Cerberus were not offered new deals.
- We are concerned the FCA is underestimating the detriment being caused to mortgage prisoners. The regulator says that the SVRs some mortgage prisoners are paying are on average only 0.4% higher than the SVRs at other active lenders. This ignores the fact that if these mortgage prisoners were with active lenders they would have access to fixed-rate deals which for many would be around 1.8%, saving them hundreds of pounds a month compared to the high Standard Variable Rates of 4% or 5% they are paying as mortgage prisoners.
- Mortgage prisoners are trapped paying high interest rates of more than 4% or 5%, costing them thousands of pounds a year in extra mortgage payments. Over the past 12 years, many mortgage prisoners have paid £20,000 to £40,000 more than customers of active, high-street lenders.
    - A former Northern Rock customer with a £130,000 repayment mortgage with Heliodor on the SVR of 4.39% will be paying £11,846 a year, compared to £9,967 a year if they could access a good value fixed rate mortgage.
    - A former Northern Rock customer with a £120,000 interest-only mortgage with Tulip / Grasmere on the SVR of 4.39% will be paying £5,268 a year, compared to £2,280 a year if they could access a good value fixed rate mortgage.
    - A customer with a £150,000 interest-only mortgage with Mortgage Agency Services on the SVR of 5.35% will be paying £8,025 a year, compared to £2,850 a year if they could access a good value fixed rate mortgage.
- MPs have heard from key workers, many risking their lives to work through the pandemic, about the personal consequences for them and their families of being trapped paying high mortgage interest rates.
- Imagine how it must feel if you are a nurse who took out a mortgage with a high street bank only to find your mortgage sold on to a vulture fund which doesn't have to treat you fairly or offer you a good deal.
- Take a mortgage prisoner who has been the victim of domestic abuse and is stuck with a vulture fund and paying a Standard Variable Rate of over 4%. If she were with a major lender then she would be offered a new fixed rate deal of around 1.6% - saving her hundreds of pounds a month. She is also on a variable rate which means that her payments will go up

[1] https://www.bbc.co.uk/news/business-45938487

again when the Bank of England increases the base rate and there is nothing she can do to gain any certainty over her monthly mortgage payments.

- The pandemic has led to unprecedented strain on family finances, we need to act now to help mortgage prisoners get lower interest rates.
- The FCA have reformed the rules surrounding the affordability test in October 2019, but the uptake of these new flexibilities has been very slow and the FCA predicted that only 14,000 of the 250,000 mortgage prisoners will be able to switch using the reformed test.
- The FCA and the Government need to help as many mortgage prisoners switch but also protect those who can't switch from being exploited by vulture funds and inactive lenders.
- The Government also needs to protect more people from having their mortgages sold on – as it currently stands FCA regulation only covers a narrow subset of the activities associated with administering a mortgage and at any time people could find their mortgage sold on to an unregulated firm or vulture fund which does not have to treat them fairly or offer them new deals or fixed interest rates.
- This is particularly important as at the moment there is nothing to stop fully regulated high-street banks selling mortgages to vulture funds. More mortgage books could be sold on as lenders leave the market after the pandemic.
- Martin Lewis of moneysavingexpert.com has said "*Mortgage prisoners are the forgotten victims of the 2008 financial crash. The Government at the time chose to bail out the banks, but unfairly – immorally – hundreds of thousands of their victims were left without adequate help, trapped in their mortgages and the financial misery caused by it. And they have been forgotten ever since*."

<u>Are Mortgage Prisoners high risk?</u>

Responses from those opposing the introduction of a cap on Standard Variable Rates have said that it cannot be introduced because mortgage prisoners are "high risk". In actual fact, analysis commissioned by the APPG found that when the mortgages were given they were not high risk and it the subsequent treatment by UK Asset Resolution and the sale to vulture funds which has caused the financial situation of some mortgage prisoners to deteriorate. If they were paying reasonable rates then all would have lower mortgage balances and be in a much better financial position.

An analysis of the rating agency view of the UK prime Residential Mortgage Backed Securities (RMBS) transactions in the market in 2007, plus transaction and UK mortgage market performance since demonstrates that:

- At the point of origination, when the mortgages were given, the Northern Rock loans were all **prime mortgages** with lower-than-average default rates, exhibiting **good borrower behaviour**
- That even through the run on the bank and subsequent turmoil, Northern Rock borrowers exhibited good borrower behaviour and kept up repayments
- When faced with **restricted financial mobility and unusually high interest rates** the level of arrears in the mortgage books has increased over the past 10+ years.
- **However, if we adjusted for SVR overpayments coming in line with other high street lenders, not only would these borrowers potentially be up to date with their payments, but their loan balances would also be around 10% lower. If we adjusted to competitive rates on the market, the difference would be even more substantial, mortgage prisoners would have far lower monthly payments and be in a much better financial position.**

<u>New Clause 24: An expansion of the scope of FCA regulation to cover all activities associated with owning and managing a mortgage</u>

<u>Background</u>

At present, FCA regulated activities in relation to mortgages include ‘entering into’ a mortgage contract and ‘administering’ a mortgage contract. Administering a mortgage contract is in turn defined as notifying the mortgage holder of changes of which they need to be aware, for example changes in interest rates, and collecting payments due under the contract.

This narrow definition of ‘administering’ does not capture the many activities which can cause consumer detriment, for example decisions on interest rates and charges, forbearance options, the range of options provided at maturity for interest-only mortgages or policies on the repossession of a property. A firm which engages in these activities but is not ‘entering into’ or ‘administering’ need not be regulated by the FCA, and so is not bound by the FCA’s requirements, including the ‘Treating Customers Fairly’ regime. A mortgage holder does not have the right of recourse to the Financial Ombudsman Service if they are not happy with the actions of the unregulated owner of their mortgage contract with regard to these unregulated activities. The FCA also cannot intervene to force unregulated entities to offer customers new deals or fixed interest rates.

Filling this regulatory gap would require two new regulated activities:

> “managing” a regulated mortgage contract means having the power to exercise or to control the exercise of any of the rights of a lender under a regulated mortgage contract.”
>
> “owning” a regulated mortgage contract means holding the legal title to a regulated mortgage contract or to own beneficially the rights of the lender under a regulated mortgage contract”

<u>Proposed amendment: New Clause 24</u>

“Mortgage contracts: regulation of management and ownership

(1) Article 61 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 shall be amended as follows.

(2) After paragraph (2), insert—

“(2A) Managing a regulated mortgage contract is also a specified kind of activity.

(2B) Owning a regulated mortgage contract is also a specified kind of activity.”

(3) For sub-sub-paragraphs (3)(a)(ii) and (3)(a)(iii) substitute—

“(ii) the contract provides for the obligation of the borrower to repay to be secured by a legal mortgage of land (other than timeshare accommodation) in the United Kingdom;

(iii) at least 40% of that land is used, or is intended to be used, as or in connection with a dwelling.”

(4) After sub-paragraph (3)(c), insert—

“(d) “managing” a regulated mortgage contract means having the power to exercise or to control the exercise of any of the rights of a lender under a regulated mortgage contract.

(e) “owning” a regulated mortgage contract means holding the legal title to a regulated mortgage contract or to own beneficially the rights of the lender under a regulated mortgage contract.”

(5) For paragraph (4), substitute—

"(4) For the purposes of sub-paragraph (3)(a)—

(a) "mortgage" includes charge and (in Scotland) a heritable security;

(b) the area of any land which comprises a building or other structure containing two or more storeys is to be taken to be the aggregate of the floor areas of each of those storeys; and

(c) "timeshare accommodation" has the meaning given by section 1 of the Timeshare Act 1992(c).""

Member's explanatory statement

This new clause would require the regulation of the 'management' and 'ownership' of a regulated mortgage contract.

New Clause 25: Applying a cap to the Standard Variable Rates charged to mortgage prisoners

Background

This amendment would place a duty on the FCA to introduce a cap on the Standard Variable Rates charged to mortgage prisoners. This would help ensure that all mortgage prisoners are treated fairly and charged fair interest rates.

Those who oppose a cap on mortgage prisoner Standard Variable Rates have said that it cannot be implemented because mortgage prisoners are high risk.

Mortgage Prisoners are widely reported as high risk, yet there has been no analysis of the impact that these borrowers' time (10+ years) as mortgage prisoners had on their financial situation. Without this analysis, it is impossible and potentially irresponsible to class all mortgage prisoners as high risk.

This is particularly true when you look at the way the investment and bond market treat these books. They are not considered too high risk by investors and their bond market funders, and in fact, investors have paid a premium for the loan pool. An analysis of the rating agency view of the UK prime Residential Mortgage Backed Securities (RMBS) transactions in the market in 2007, plus transaction and UK mortgage market performance since demonstrates that:

- At the point of origination, when the mortgages were given, the Northern Rock loans were all **prime mortgages** with lower-than-average default rates, exhibiting **good borrower behaviour**
- That even through the run on the bank and subsequent turmoil, Northern Rock borrowers exhibited good borrower behaviour and kept up repayments
- When faced with **restricted financial mobility and unusually high interest rates** the level of arrears in the mortgage books has increased over the past 10+ years.
- **However, if we adjusted for SVR overpayments coming in line with other high street lenders, not only would these borrowers potentially be up to date with their payments, but their loan balances would also be around 10% lower. If we adjusted to competitive rates on the market, the difference would be even more substantial, mortgage prisoners would have far lower monthly payments and be in a much better financial position.**

This analysis shows that it was the recklessness of the Northern Rock management and the subsequent treatment of mortgage prisoners by UK Asset Resolution and vulture funds like Cerberus which have led directly to the misery caused to thousands of mortgage prisoners.

Arguments by the Government that capping SVRs cannot be done because the mortgages are high risk do not make sense. If mortgage prisoners had access to reasonable rates available to borrowers with major high-street lenders then many would not be in financial difficulty. Capping SVRs would ensure fair treatment for all mortgage prisoners and reduce the level of risk and arrears suffered by mortgage prisoners.

Introducing an SVR cap on closed, non-lending books would not disrupt the RMBS market, in fact it would likely give clarity to stressed assumptions made by rating agencies regarding interest rates charged when the lender is no longer active.

Proposed amendment: New Clause 25

"**Standard Variable Rates: Cap on charges for Mortgage Prisoners**

In section 137A of the Financial Services and Markets Act 2000 (The FCA's general rules), after subsection (6), insert—

"(7) The FCA must make rules by virtue of subsection (1) in relation to introducing a cap on the interest rates charged to mortgage prisoners in relation to regulated mortgage contracts with a view to securing an appropriate degree of protection for consumers.

(8) In subsection (7) "mortgage prisoner" means a consumer who cannot switch to a different lender because of their characteristics and has a regulated mortgage contract with one of the following type of firms—

(a) inactive lenders: firms authorised for mortgage lending that are no longer lending; and

(b) unregulated entities: firms not authorised for mortgage lending.

(9) The rules made by the FCA under subsection (7) must set the level of the cap on the "Standard Variable Rate" at a level no more than 2 percentage points above the Bank of England base rate.

(10) In subsection (9) "Standard Variable Rate" means the variable rate of interest charged under the regulated mortgage contract after the end of any initial introductory deal.

(11) The FCA must ensure any rules that it is required to make as a result of the amendment made by subsection (7) are made not later than 31st July 2021.""

Member's explanatory statement

This new clause would require the FCA to introduce a cap on the Standard Variable Rates charged to consumers who cannot switch to a different lender because of their characteristics and who have a regulated mortgage contract with either an inactive lender or an unregulated entity.

New Clause 26: No Consent, No Sale

Background

This amendment would require the written consent of the borrower for the transfer of a regulated mortgage contract. It would require lenders to provide specified information to borrowers when seeking this consent and for this statement to be approved in advance by the FCA.

Proposed Amendment: New Clause 26

"**Conditions for the transfer of a regulated mortgage contract**

(1) A regulated mortgage contract shall not be transferred without the written consent of the borrower.

(2) When seeking consent from either an existing or a new borrower the lender must provide a statement to the borrower containing sufficient information in order for them to make an informed decision.

(3) The statement provided pursuant to subsection (2) must be approved in advance by the Financial Conduct Authority and shall include—

(a) a clear explanation of the implications in terms of the interest rates which will be offered to the borrower including details of the policies and procedures which will apply for the setting of mortgage interest rates and for the making of repayments if the transfer takes place;

(b) how the transfer might affect the borrower;

(c) the name and address of the intended transferee, and of any holding company applicable;

(d) the relationship, if any, between the lender and the transferee;

(e) a description of the intended transferee and of its business, including how long it has been in operation, and details of its involvement in the management of mortgages; and

(f) confirmation that in the absence of a specific consent the existing arrangements will continue to apply.

(4) Each borrower shall be approached individually and shall be given a reasonable time within which to give or decline to give their consent.

(5) In this section, “regulated mortgage contract” has the meaning given by article 61(3) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.”

Member’s explanatory statement

This new clause would require the written consent of the borrower for the transfer of a regulated mortgage contract and require lenders to provide specified information to borrowers when seeking this consent and for this statement to be approved in advance by the FCA.