All Party Parliamentary Group on Mortgage Prisoners

Responses to arguments used by the Government and those opposing the Lords amendment (number 8) to help mortgage prisoners

Lords Amendment number 8 is expected to be considered by the House of Commons on Monday 26th April.

https://publications.parliament.uk/pa/bills/cbill/58-01/0287/200287.pdf

Lords Amendment 8 would cap Standard Variable Rates for mortgage prisoners and ensure that they could access new fixed rate deals.

The Lords amendment would offer real and immediate help to thousands of mortgage prisoners. It would help all mortgage prisoners including key workers, veterans of the armed forces, those suffering from ill health and victims of domestic abuse. The amendment would ensure that all mortgage prisoners have access to fair interest rates.

Mortgage prisoners are not to blame for their predicament. They were victims of the financial crisis and found themselves trapped on high interest rates before being sold on to inactive lenders and mortgage loan sharks which refuse to treat them fairly or offer them new deals.

As consumer champion, Martin Lewis has said an SVR cap on closed book mortgages "*would provide immediate emergency relief to those most at risk of financial ruin. No one should underestimate the threat to wellbeing and even lives if this doesn't happen, and happen soon*."

Supporting the Lords amendment would help the Chancellor to meet the commitment he gave to Martin Lewis to find a "workable solution" for all mortgage prisoners.

- A former customer of Northern Rock 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 customer of Northern Rock 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 (part of the Co-operative banking group) 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.

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Arguments against the amendment: The FCA has changed the affordability rules

Statements opposing the amendment

"*Half of them, 125,000 mortgage holders, could switch to an active lender if they chose to. They could do so right now, without any action or intervention from government at all.*" – Lord True, Column 1409, 14th April 2021

"*Covid-19 has also caused delays in the implementation of the FCA's initial solution, which relaxed the regulatory affordability rules. We do not, therefore, know how effective those will be in solving the problems of mortgage prisoners, and we should be wary of leaping to further solutions until existing remedies have had time to take effect.*" – Baroness Noakes, Column 1403, 14th April 2021

"*That is why, over the last three years, I have engaged with the problem and worked with the FCA to change the lending criteria so that an estimated 125,000 of the 250,000 mortgage prisoners have been able to switch to more affordable mortgages if they are not taking on lending and are not in arrears.*" – John Glen MP, Colum 362, 13th January 2021

Response

When it introduced the reforms to the affordability test the FCA assumed that it would only help 2,000 to 14,000 mortgage prisoners to escape to new lenders.[1]

The interest in offering the new flexibility has been very slow, with reports that only a few lenders are offering the streamlined affordability test. Most lenders are making mortgage prisoners produce a letter from their existing lender which some are finding difficult to do or have not been sent.

The rules were changed in October 2019, but only a handful of mortgage prisoners have so far been able to switch.

The introduction of a cap on the SVR and ensuring that they could access fixed-rate deals would help all mortgage prisoners – including many of the most vulnerable. It would provide immediate relief and give them vital breathing space as more solutions are worked up.

Arguments against the amendment: "Customer protections" were included when the mortgages were sold by the Government to the private sector

Response

The Government could have set strict conditions when selling the mortgages on the interest rates which could be charged.

But when it sold £16 billion of mortgages to Tulip and Cerberus it only imposed a 12 month restriction on increases to the Standard Variable Rate.

These have long since expired and the Chief Executive of Tulip mortgages told the Treasury Committee that the firm now had "complete discretion to set the interest rate policy".[2]

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[1] https://www.fca.org.uk/publication/consultation/cp19-14.pdf Para 71

[2] https://old.parliament.uk/documents/commons-committees/treasury/Correspondence/2017-19/Correspondence%20-%20Director%20of%20Tulip%20Mortgages%20to%20the%20Chair%20re%20Mortgage%20Prisoners.pdf

On the sale to Heliodor the Government claimed that the organisation which bought the loans would be required to set their Standard Variable Rates by reference to the SVRs charged by a "basket of 15 active lenders".[3]

But when you read the details of the securitisation agreements for the mortgage loans sold on by the Government previously, you will find that actually the Government has only required the SVR to be set at the level of the third highest of the 15 active lenders.

This is absolutely critical as the third highest SVR is actually at 4.49%.

The lowest SVR among those 15 active lenders is 3.35%. The average SVR weighted by market share is 3.72%.

When the latest and final sale was announced in February 2021 to Davidson Kempner Partners and Citibank, UKAR said that the SVR was going to be charged with reference to the basket of 15 active lenders.

There are no details about how this will work in practice, but if it reflects practice in earlier sales it won't actually provide any protection to customers.

Also remember that active lenders do not set the level of their SVRs to attract or retain customers.

Arguments against the amendment: The Government could not have applied greater safeguards or required that firms buying mortgages from the Government offered customers new deals and fixed rates

Response

The risk to these customers was identified. In January 2016, Lord McFall wrote to the Treasury, UK Asset Resolution and the FCA to say that customers affected by these sales should be protected, offered a fair deal and given access to fixed rates.[4] The Government could have insisted as part of the sales process that purchasers were active lenders who could offer new deals. UKAR thought that Cerberus would offer new deals but the BBC reported that they had been misled.

UKAR wrote to Lord McFall in 2016 saying that returning these mortgages to the private sector meant that "the option to be offered new deals, extra lending and fixed rates" should become available.[5]

But this requirement was not written into the contract when mortgages were sold to Cerberus.

An article on the BBC website said that UKAR were "misled" by Cerberus.[6] A UKAR spokesman told BBC Panorama that Cerberus had the ability to lend to the former Northern Rock customers and that UKAR believed they intended to do so.

They said:

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[3] https://questions-statements.parliament.uk/written-questions/detail/2020-11-10/113556
[4] This was covered in New City Agenda article https://newcityagenda.co.uk/northernrock/
[5] Reply from UKAR to Lord McFall - https://newcityagenda.co.uk/wp-content/uploads/2017/09/Reply-from-Richard-Banks_UKAR_to-Lord-McFall.pdf
[6] https://www.bbc.co.uk/news/business-45938487

"*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.*"

None of the mortgage prisoners sold by the Government to Cerberus have been offered new deals or fixed rates.

Arguments against the amendment: Many mortgage prisoners are on low rates.

Response

The Government has said that some mortgage prisoners are paying rates less than 3.5%. It is true that there are some lucky mortgage prisoners on low rates.

But those sold on by the Government to vulture funds like Cerberus are paying high rates – in the package sold by the Government containing over 66,000 mortgage loans, 52% were paying rates between 4.5% and 5% and 36% were paying rates of over 5% when the mortgages were securitised.

The Government cannot excuse its responsibility by pointing to other mortgage prisoners and trying to reduce or minimise the detriment being suffered.

Arguments against the amendment: Martin Lewis and the LSE report oppose the introduction of a cap on SVRs

Statements opposing the amendment

"*Indeed, Martin Lewis, who does some excellent work in this regard and whom I met on this topic recently, looked at this very matter—he commissioned some work from the London School of Economics to look into it—and recommended that we should not take this cap on the SVR.*" – John Glen MP, Column 362, 13th January 2021

Response

Martin Lewis supports a cap on SVRs for closed book mortgages. After the amendment was passed in the Lords he said[7]:

"*I am delighted that the Lords has seen the injustice that has been heaped on 100,000s of mortgage prisoners. While the Government chose to bail out the banks in the financial crisis, it has never bailed out the banks' customers who were victims of that collapse. Mortgage prisoners have been left paying obscene interest rates for over a decade, through no fault of their own.*"

The consumer champion has made his views clear:

"*I believe for those on closed-book mortgages [a cap on SVRs] is a good stopgap while other detailed solutions are worked up, and I'm very happy the APPG on Mortgage Prisoners is pushing it. This would provide immediate emergency relief to those most at risk of financial ruin. No one should underestimate the threat to wellbeing and even lives if this doesn't happen, and happen soon.*"

[7] https://www.moneysavingexpert.com/news/2021/04/house-of-lords-mortgage-prisoners-interest-rate-cap/

The LSE report said "*If an SVR cap were to be adopted it should apply to closed-book borrowers only*." The amendment passed by the Lords is narrow and only applies the SVR cap to closed book mortgage lenders.

Arguments against the amendment: Mortgage prisoners are only paying 0.4% more than similar borrowers.

Statements opposing the amendment

"*FCA analysis has found that, despite this, on average the 55,000 borrowers with inactive firms who have characteristics that would make it difficult for them to switch but are up to date with payments are paying around 0.4 percentage points more than similar borrowers with active lenders who are now on a reversion rate, which will normally be their lender's standard variable rate*." – Lord True, column 1410, 14th April 2021

Response

The Government has cited the FCA claim that mortgage prisoners are only paying 0.4% more than similar borrowers.

But this comparison is meaningless as it only considers the Standard Variable Rates and doesn't acknowledge that customers of 97% of lenders in the active market are not stuck on Standard Variable Rates as they have the option to access new deals.[8]

Only around 10% of customers at active lenders are paying the SVR – and many that are typically switch to a new deal quickly – more than three-quarters of consumers with active lenders switch to a new deal within six months of moving onto an SVR. Mortgage prisoners have been stuck on SVRs for more than 10 years.

Take two customers – both paying an SVR of over 4% and both with a Loan-To-Value of 75%. The one with the active lender could access a new deal at 1.8%. The mortgage prisoner is stuck on the SVR of over 4%.

The mortgage prisoner stuck on the SVR is paying over £5,000 a year extra in mortgage payments.

This is not the small difference – it has a massive impact on people's lives and for some it is the difference between being comfortable and a constant struggle to make ends meet.

So, in actual fact mortgage prisoners are paying double or in some cases treble the rates of comparable borrowers in the active market.

Arguments against the amendment: 70,000 mortgage prisoners are in arrears and so are currently in the same position they are with other active lenders in that they are stuck on the SVR

Statements opposing the amendment

"*However, around 70,000 of those borrowers are currently in arrears. The Government do not underestimate how stressful it can be to be in arrears, but it is important to note that borrowers in arrears with inactive firms are in a similar situation to borrowers in arrears with active lenders. In both cases, it is not possible to move to a new fixed rate deal and it is not possible to switch lender.*

[8] The UK Finance voluntary agreement applies to customers of lenders in the active market but excludes mortgage prisoners with inactive lenders and unregulated entities https://www.ukfinance.org.uk/lenders-help-ineligible-homeowners-tied-reversion-rates-switch-products

Customers in arrears with either inactive firms or active lenders have the same protection under the FCA's conduct rules, whereby firms are required to make all reasonable efforts to explore arrangements to resolve the situation." – Lord True, Column 1410, 14th April 2021

Response

Borrowers with active lenders could be on a short-term deal and this will mean that the arrears they incur from temporary financial difficulties will be far lower than mortgage prisoners. Also, if borrowers in the active market are able to capitalise their arrears by adding them on to the size of their mortgage and extending its term then they will be able to access a two-year or five-year fixed rate again and significantly reduce their monthly payment.

Arguments against the amendment: Mortgage prisoners would pay high rates because they have high Loan-to-Values

Statements opposing the amendment

"*The result would be a rate broadly aligned with the competitive rates available in the active mortgage market, but those rates are available only to low loan-to-value ratios, and to borrowers with the most robust financial profiles. The market rates for riskier high LTVs are probably twice that level, even if the personal financial profile of the borrower is resilient. In addition, there is not an unlimited supply of fixed-rate deals. Many lenders simply do not offer fixed-rate deals on high LTV loans, especially when combined with weaker personal financial profiles*." – Baroness Noakes, Column 1404, 14th April 2021

Response

Actually, three-quarters of mortgage prisoners (up to date with payments) had Loan-to-Values of less than 75% when the FCA last published data in January 2020.[9] Since that date, house prices in England have risen by at least 8.5% which would further improve the position of many mortgage prisoners. The Bank of England says that the average 2-year fixed rate available to those with less than 75% LTV was 1.56% and the average 5-year fixed rate available for those with less than 75% LTV was 1.75%.[10]

If mortgage prisoners were entitled to new deals on the same basis as other customers then the average rate they would be paying would be 1.8%, below the level of the SVR cap of 2.1% given the current level of the Bank of England base rate.

Arguments against the amendment: Mortgage prisoners are high risk and would not qualify for a mortgage in today's environment

Statements opposing the amendment

"*[Mortgage Prisoners] find themselves in a difficult position as a result of taking on debt when market conditions and regulation allowed mortgage lending in ways that are not generally possible now. We have to remember that many of the borrowers we are talking about would not qualify for a mortgage in today's environment, either because of the type of mortgage that they have or their own financial circumstances. This is not to blame them, but it is a relevant fact*." – Baroness Noakes, Column 1403, 14th April 2021

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[9] See Chart 7 from the FCA data - https://www.fca.org.uk/data/understanding-mortgage-prisoners

[10] Bank of England data correct as at 31st March 2021 – available through this link

"*Consumers with these kinds of risk characteristics would not be able to easily access new fixed rate deals in the active market*" – Lord True, column 1410, 14th April 2021

Response

The Government will also imply that mortgage prisoners are high risk.

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 given loans by regulated high-street banks like Northern Rock and Bradford and Bingley which were authorised and supervised by the FSA meeting the standards which the FSA set at the time. The banks from whom they borrowed the money crashed in the 2008 financial crisis, largely through poor regulation, which lies at the Government's door, not the door of those who took out mortgages. People with absolutely identical credit profiles who took out their mortgages with a bank which did not crash or which was bailed out by the Government in a different way like RBS and Lloyds have had many opportunities to refinance, which is normal in the life of the mortgage.

Mortgage prisoners were then sold on by the Government to mortgage loan sharks which trapped them paying high interest rates.

It is true that some mortgage prisoners are trapped because they are vulnerable as they have a long-term illness, a broken relationship or are the victim of domestic violence. Lenders in the active market would not deny these customers access to new deals because of these vulnerabilities. Yet mortgage prisoners with these characteristics can find themselves stuck on high SVRs.

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.

> "A mortgage prisoner who was a victim of domestic abuse and has a disabled child told UK Mortgage Prisoners that the excessive interest rate was causing her family severe hardship. She said she had made serious cuts to the amount spent on groceries, has no television or heating during the winter and has no choice but to accept help from local charities. The overall condition of her house is poor, the roof is leaking and it is putting her child at risk. But due to an excessively high mortgage rate and regular mortgage increases she finds it impossible to save any money towards renovating."

Arguments against the amendment: Capping SVRs is interfering in the market and will stop lenders varying SVRs in line with market conditions

Statements opposing the amendment

"*Capping SVRs on mortgages with inactive firms would also have an impact on their financial stability because it would restrict lenders' ability to vary rates in line with the market conditions*." – Lord True, Column 1411, 14th April 2021

Response

The Government has said that this is interfering in the market and will restrict ability of lenders to vary the SVR in response to market conditions.

Vulture funds and inactive lenders have kept people on high Standard Variable Rates for years – over this time market conditions and funding costs for banks and other lenders have decreased significantly but these have not been passed on appropriately to mortgage prisoners.

The amendment only applies to closed books of mortgages – those where lenders are not currently lending or where the loans are owned by unregulated entities. Competition does not work for those customers.

Bank and lenders who are active in the market and competing and offering their new and existing customers good deals have nothing to fear and will not be affected.

It would not distort the market, it would just ensure universal fair treatment and the same rights for mortgage prisoners to access new deals as those in the active market.

Expert evidence submitted to the APPG by a former employee of PIMCO and a lead analyst in the market for mortgage securities said that the introduction of an SVR cap would not disrupt the market for Residential Mortgage Backed Securities.

Arguments against the amendment: The Lords amendment requires firms that do not have the expertise or regulatory permissions to offer mortgages to do so

Statements opposing the amendment

"*Finally, both Amendments 21 and 37B would require firms that do not currently have the expertise, systems or regulatory permissions necessary to offer new mortgage products to do so*." – Lord True, column 1412, 14th April 2021

Response

The FCA has noted that in the majority of cases the mortgage is owned by a regulated firm with permissions to offer mortgages. So these firms have the expertise to offer mortgages and could choose to do so, but have decided to keep mortgage prisoners trapped on high SVRs. In August 2020, Sheldon Mills, Executive Director, Consumers and Competition at the FCA, wrote to the APPG to say that "the majority of unregulated firms that own mortgage books have not only appointed regulated administrators (as required by legislation), but are also delegating key decision-making responsibilities about interest rate setting and forbearance to regulated firms." For example, the FCA told us that Landmark Mortgages Ltd and Topaz Finance Ltd (Heliodor) are all regulated lenders. Other lenders which hold mortgage prisoners like Mortgage Agency Services are part of fully regulated banking groups and so hold all of the regulatory permissions and expertise necessary.

The FCA has also been clear that lenders can offer transfers to new mortgage products such as fixed rates interactively without needing to provide advice. Firms are required to appoint a mortgage administrator and the activities of that administrator include the ability and expertise necessary to vary interest rates. These firms would therefore have the expertise and ability to vary interest rates and to offer fixed rate deals.

Arguments against the amendment: The Government has developed a proportionate range of solutions for mortgage prisoners

Response

The Government has not come up with a range of solutions to help mortgage prisoners. The Lords amendment would provide immediate relief to mortgage prisoners by capping SVRs and allowing them to gain certainty over their mortgage payments by accessing new fixed-rate deals.

Mortgage terms and conditions allow loans to be transferred at any time and without the borrowers consent. This means that anyone can find their mortgage sold on to a mortgage loan shark at any time and find themselves trapped on a high Standard Variable Rate. People can take out a mortgage with a fully-regulated high street bank and find themselves sold on to an unregulated entity.

Arguments against the amendment: Mortgage borrowers have received protection from repossession and support through Covid-19 payment holidays

Statements opposing the amendment

"*The Government have taken other action in the period of Covid to help and support borrowers. In October, the FCA confirmed additional options to support borrowers, including guidance to allow borrowers who are up to date with their payments with a recently matured or soon-to-mature interest-only or part and part mortgage to delay repaying the capital on their mortgage while continuing to make interest payments. This guidance is in place until October 2021*." – Lord True, column 1411, 14th April 2021

Response

The Covid-19 pandemic has had a damaging impact on family finances. Accessing payment holidays and other support can make it harder for some mortgage prisoners to switch as these can be taken into account in decisions by a new lender about whether to offer them a new loan. Covid-19 payment holidays were limited to six months by the FCA even though the pandemic and economic restrictions have continued for over a year. If mortgage prisoners miss even a single monthly payment (other than through a Covid-19 payment holiday) then they are prohibited from switching using the modified affordability test for the next 12 months.

The general ban on repossessions will expire at the end of May. The ban on repossessions of interest-only mortgages only applies to those whose interest-only mortgage matured after 20th March 2020. Those whose interest-only mortgage matured before that date could face repossession before October 2021. The APPG is aware of mortgage prisoners in their seventies who could face repossession. They are being told that they are too old for another conventional mortgage and too young for equity release and are not being offered help or options from lenders.