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Rt Hon Lord McFall of Alcluith
House of Lords
London
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21 March 2016
Our Ref: 160104C

Dear John,

Re: Sales of Mortgages by UK Asset Resolution (UKAR)

Thank you for your letter, received on 4 January 2016, in which you raised a number of questions relating to the sale of mortgage assets by UKAR and the mortgage market more widely. I am sorry for the length of time it has taken to respond.

On the specific points you have raised, we can confirm the following:

What regulations apply to a company purchasing mortgages from an existing lender for securitisation?

If a company purchasing mortgages from an existing lender is an authorised person they will be subject to our Handbook, including Principles for Businesses (PRIN) and, if they have a mortgage-related permission, the requirements in Mortgage: Conduct of Business (MCOB) that apply post-sale.

The legislative framework does not require a company purchasing mortgages, including for securitisation, from a lender to be authorised, provided that it engages an authorised third party with a mortgage administration permission to administer the mortgages. The regulated activity of administering a regulated mortgage contract comprises notifying the borrower of changes in interest rates or payments due under the contract, or of other matters of which the contract requires the borrower to be notified, and taking any necessary steps for the purposes of collecting or recovering payments due under the contract from the borrower. The administrator will be subject to relevant Handbook provisions, including:

- Certain provisions in MCOB 12 relating to payment shortfall charges and excessive charges
- MCOB 13 regarding dealing fairly with customers in arrears.

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Does a change in the way a mortgage interest rate is set to introduce an explicit link to LIBOR represent a change to the terms and conditions of the mortgage? Would this change have to be communicated to consumers?

This will depend on the individual terms of the borrower's contract. Firms can only make unilateral changes to their existing contracts with consumers if they are set out in a fair variation term within the contract. Some mortgages may contain variation terms which provide a basis for the firm to make changes to the rate of interest charged based on changes to LIBOR, or based on another index, or no index.

If the terms and conditions of the mortgage contract do not provide a legal basis for the lender to introduce an express reference to LIBOR (or any other rate) unilaterally, then it would not be possible to introduce such a reference without the customer's agreement.

MCOB 7.6.1 requires the borrower to be given reasonable notice of any changes to the payments that the borrower is required to make resulting from interest rate changes, and of any material change by the firm to the terms and conditions of the contract where that change is permitted without the customer's prior consent.

It should be noted that terms in consumer contracts (including variation terms) must comply with the requirements of the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs), if the contract was entered into before 1 October 2015 (the Consumer Rights Act 2015 applies to contracts entered into on or after that date). Under this legislation, terms which, contrary to the requirement of good faith, cause a significant imbalance between the parties, to the detriment of the consumer are unfair and as a result are not binding on consumers. In making an assessment of whether a variation term is fair or not under the legislation, factors to consider include whether or not a firm will provide adequate notice of changes to its contract terms to consumers, the length of any notice given and the method of giving notice.

Do the transitional arrangements in the Mortgage Market Review require lenders, including UKAR, Commercial First and Cerberus to offer their customers reasonable fixed rates to allow customers to gain certainty over their mortgage payments?

The FCA's responsible lending rules were introduced in April 2014, following a comprehensive review of the mortgage market - the Mortgage Market Review (MMR). These rules are designed to stop a return to the poor lending practices seen pre-crisis, by requiring lenders to ensure that customers take out mortgages that are affordable. The rules include transitional arrangements allowing lenders not to conduct an affordability assessment in certain circumstances where an existing customer wishes to change mortgage (e.g. to move to a different rate) and does not wish to borrow any more money. The responsible lending rules apply where an FCA regulated firm is offering new credit. The transitional arrangements do not require lenders to offer customers a particular rate or product e.g. a fixed rate mortgage.

For further details on the MMR please refer to our website http://www.fca.org.uk/firms/firm-types/mortgage-brokers-and-home-finance-lenders/mortgage-market-review.

Thank you for contacting the FCA in relation to the sale of mortgage assets, and I am sorry once again for the delay in responding.

Tracey McDermott
Acting Chief Executive