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Research Briefing

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10 February 2022

Mortgage prisoners

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Summary

Who are mortgage prisoners?

"Mortgage prisoners" are people who are unable to switch mortgages, even if they are up to date with their payments.

Most became mortgage prisoners because their provider collapsed in or soon after the financial crisis of 2008. UK Asset Resolution (UKAR) took control of the mortgage books concerned and later sold them off. But in doing so they had to maximise profit to the taxpayer. This meant that many mortgages were sold to investors who were not authorised or regulated. At the same time, regulators had imposed more stringent criteria on lenders to help prevent another financial crash. Many people whose circumstances had changed were unable to meet the new conditions. They were unable to move to other deals, even if they would pay less by doing so.

The Financial Conduct Authority (FCA) calculated that 250,000 mortgage-holders were affected in 2019 and 190,000 in 2021.

Actions to help mortgage prisoners

In late 2019 the FCA introduced modified mortgage assessment criteria. It hoped that this would allow certain groups of mortgage prisoners to switch to better deals. But it estimated that only 14,000 (less than 10%) of mortgage prisoners would be able to switch. Even that figure assumed that mortgage providers would take up the option. Inactive lenders and unregulated firms had to inform their mortgage-holders of possibilities.

But a few months later the coronavirus pandemic increased financial risks for all involved. The FCA expressed its disappointment at large lenders' lack of response. Meanwhile it introduced wider measures to support all mortgage-holders through the pandemic. It also introduced interim measures that allowed some mortgage prisoners to extend deadlines for repayment.

Continuing frustration led to calls for more effective and imaginative responses. The consumer advocate Martin Lewis, the UK Mortgage Prisoner Action Group and the All-Party Parliamentary Group on Mortgage Prisoners highlighted the continuing situation. They argued that government action was at least partly responsible for the problem.

Parliamentary consideration in 2021

In early 2021 the House of Lords passed an amendment to the Financial Services Bill that would have required lenders to offer mortgage prisoners loans at no more than two percentage points above the base rate. But the Government rejected the amendment. It argued that it would be an unacceptable intervention into the mortgage market.

The Chief Executive of the FCA told the Treasury Committee that further reforms to help resolve the situation were largely up to Parliament.

The FCA's 2021 report

In November 2021, the FCA published new data on mortgage prisoners and the wider issue. The report intended to provide fresh information to enable the Government and industry to consider further steps. Although it found that 190,000 mortgage-holders were affected, it only regarded 47,000 as mortgage prisoners. Some stakeholders have criticised the FCA's assumptions and calculations.

The report found limited effectiveness of the FCA's reforms to date, with only 200 mortgage-holders having benefited from the modified assessment criteria.

1 Who are mortgage prisoners?

Mortgage prisoners are mortgage customers who are unable to switch mortgages even if they are up to date with their payments. They may have to pay much more than other consumers as they cannot switch to cheaper mortgages on the market.

One of the consequences of the financial crisis of 2008 – and the collapse of both Northern Rock and Bradford & Bingley – was the transfer of their many mortgage accounts to a publicly owned body – UK Asset Resolution (UKAR). Some customers who had their mortgage taken over by UKAR have become mortgage prisoners. As UKAR is 'inactive' – it doesn't make loans – the holders of the mortgages it manages cannot move to a better deal within the company. As set out below, UKAR has sold on most of the mortgages to other companies, many of which are also inactive.[1]

In most cases, homeowners became mortgage prisoners because they had been given mortgages under relatively relaxed pre-2008 lending regulations. After the financial crisis, the Financial Services Authority (FSA) – predecessor to the Financial Conduct Authority (FCA) – made mortgage affordability criteria much stricter in order to avoid another crash.[2][3] This meant that many mortgage-holders have been unable to switch to better deals and have been stuck paying their creditor's standard variable rate (SVR). Again, this has particularly affected people who hold mortgages with inactive lenders.

1.1 Sale of mortgage books

UK Asset Resolution was established to "manage the orderly wind down" of the failed lenders. They had been nationalised during the financial crisis. As its website explains, UKAR set out to

> ...develop and execute an investment strategy for disposing of the Government's underlying investments in the companies in an orderly and active way. This was within the context of protecting and creating value for the taxpayer as shareholder, acting in a way that promoted competition, and treating customers fairly.

1 UK Asset Resolution, "About us"; Kath Scanlon et al., Releasing the mortgage prisoners: final report, LSE, November 2020 (PDF), p1-2
2 Financial Conduct Authority, Affording a mortgage, 4 April 2016 (accessed 13 December 2021)
3 See House of Commons Library, Mortgage Market Review (CBP-0508) for further background.

> To achieve its objectives, UKAR implemented a cost effective and efficient integrated model for the companies.
>
> [...]
>
> As a result of customer redemptions and asset sales, by April 2019 UKAR had fully repaid the Government loans given to the companies totalling £48.7bn. Both companies continued to be owned by the Government on behalf of the taxpayer until 2021 when UKAR achieved its ultimate objective through the sale of the companies, along with their remaining assets.[4]

While UKAR met its broad objectives, the focus on maximising value for taxpayers meant that loan books were sold to a range of creditors. While some of these were active lenders, others were not. They include capital management companies that do not (and are not authorised to) offer mortgages, let alone offer more attractive deals in a competitive market.

A 2020 review of the situation facing mortgage prisoners by the LSE sets out the history as follows:

> UKAR owned £56 billion worth of residential mortgages in 2010; as of end-March 2020 the amount was down to £4.7 billion, of which £2.2 billion was for owner occupied homes, according to last annual report. Of the reduction, 53% was due to mortgage redemptions or part repayments. The other £25 billion decline in residential mortgages was mostly through loan-book sales.
>
> Some of the loans were bought by active lenders (the books were tranched up to facilitate this) but most were sold to firms that are not mortgage lenders. These buyers packaged the loans into residential mortgage-backed securities (RMBS) that were then sold to investors. Purchasers included Virgin Money, TSB and consortia led by JP Morgan, Cerberus, Prudential and Barclays. As noted above, UKAR's primary focus was on financial return to the government, rather than impact on customers. This contrasts with the customer-centred approach taken decades earlier when local authority mortgage books were sold by the then Department of the Environment.[5]

Sales of mortgage books to such creditors – and the consequent effects on mortgage-holders – have been the subject of criticism and concern. For instance, a Commons debate on mortgage prisoners on 6 June 2019 highlighted links between the plight that many mortgage-holders found themselves in and the sale of mortgage books to such institutions, most notably Cerberus.[6] While most relevant cases have arisen from the effects of the global financial crisis, there is no ban on other lenders selling their mortgage books to unregulated creditors.[7]

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4 UK Asset Resolution, "About us"

5 UK Asset Resolution, "About us"; Kath Scanlon et al., Releasing the mortgage prisoners: final report, LSE, November 2020 (PDF), p2

6 HC Deb 6 June 2019 [Mortgage Prisoners]; see also section 2.2.

7 Scanlon et al. also note that other reasons why mortgage-holders can become prisoners, notably those who have bought properties with external cladding.

The potential sale of Tesco Bank's mortgage books to an inactive lender in 2019 had led to widespread concern, not least on the part of the APPG on Mortgage Prisoners, which sought reassurance that such a sale would not go ahead.[8] Ultimately, Tesco Bank sold the mortgage book to the Lloyds Banking Group, and mortgage-holders were transferred to Halifax terms and conditions.[9]

1.2 Consequences for mortgage-holders

In 2019, *The Daily Mail* set out a number of scenarios that could have led people to 'mortgage prison':

> **What sort of mortgage prisoner are you?**
>
> 1. You borrowed too much and your property is worth less than the mortgage. You're an equity prisoner.
>
> 2. You borrowed on interest-only and have no way to repay the capital. You're an interest-only prisoner.
>
> 3. You borrowed a mortgage you could afford but have seen a change in your income. You're an affordability prisoner.
>
> 4. You borrowed sub-prime and on a discount rate and you can't afford your repayments. You're a credit prisoner.[10]

Harcus Parker, a law firm planning litigation on behalf of mortgage prisoners, has presented the issue as follows:

> They became trapped being charged interest at a higher level than prevailing rates amongst active lenders in the residential mortgage market. This was even true in cases where borrowers were maintaining their mortgages at higher interest rates. What seems to have happened is that many inactive lenders took advantage of the captive state of their mortgage customers, and the fact that they did not need to compete in the market for new customers, to set their interest rates at a high level.[11]

In March 2021, the *Daily Mail* reported that the UK Mortgage Prisoner Action Group

> ...says many of its members are paying rates at least 1.33 per cent higher than the average market standard variable rate - the default rate that borrowers drop on to when a fixed-term mortgage deal ends.

8 FT Adviser, "Tesco refuses to commit to MPs' demands on mortgage sale", 6 June 2019

9 Mortgage Solutions, "Update: Lloyds Bank confirms Tesco mortgage borrowers can product switch at end of fixed term", 3 September 2019

10 *Daily Mail*, "If MPs want to help mortgage prisoners they must revive golden goodbyes and admit not everyone should be a homeowner, says SARAH DAVIDSON", 8 June 2019 (accessed 15 December 2021)

11 Harcus Parker, Mortgage prisoner litigation (accessed 14 December 2021)

> With mainstream lenders' SVRs sitting at around 3.5 to 4.5 per cent, this means most are paying interest rates of around 5 to 6 per cent.
>
> When compared to a fixed-term deal, the difference is more stark. For someone with a 25 per cent deposit taking out a standard mortgage on a two-year fixed term, the interest rate is currently around 1.5 per cent.[12]

As discussed later, the FCA has calculated the number of people affected under various categories, notably depending on whether they would be likely to benefit from moving to a different mortgage. Those figures and definitions have been challenged by other stakeholders and are discussed in relevant sections below. Overall, though, the FCA reported that about 250,000 people had mortgages in "closed mortgage books" or held by an unregulated creditor in 2019.[13] In November 2021, it estimated that there were 195,000.[14]

12 Thisismoney.co.uk, "'It's like having a brick tied around your neck': These three mortgage prisoners have been trapped in high-interest loans since 2008 - will a law change finally offer an escape?", 29 March 2021

13 Financial Conduct Authority, Understanding mortgage prisoners, 17 January 2020 (accessed 13 December 2021)

14 Financial Conduct Authority, Mortgage prisoner review, 29 November 2021 (accessed 13 December 2021)

2 Parliamentary consideration in 2018-2019

2.1 Treasury Committee

In June 2018 the Treasury Committee asked the then Chief Executive of the FCA, Andrew Bailey, about the regulator's consideration of ways of helping customers of inactive lenders.

In his responses, Andrew Bailey highlighted complexities arising from the fact that many of the inactive lenders were outside the regulatory perimeter – that is, not directly subject to the FCA's authority:

> We have had, in recent times, discussions with a number of inactive lenders about their policies, and we will need to have further discussions with Government as to what we do about this, because we are at a perimeter issue again. I can assure you that we want to get to the same solution for inactive lenders. It is not fair that, by no choice of their own, people find that their mortgage has been transferred to an inactive lender or the party has become inactive, and they are then put in a difficult position. You are getting at another important point: there is a higher probability that that will be the case for people who are with a slightly marginal mortgage lender, which could get into trouble and become inactive for one reason or another. You have my commitment that we will look through every way we can to try to solve this issue.[15]

He noted further potential complexity (and frustration) arising from the EU framework of conduct rules for mortgage firms. Recent changes made by the Mortgage Credit Directive 2016 affected affordability assessments:

> Both we and the Treasury have been around this question several times, because the point gets made about whether we are over-interpreting it. We have not managed to get ourselves into a position where we think we are. The challenge at the moment—it is really bonkers—is that you can remortgage with an active lender. If you are with an active lender, you can remortgage with your existing lender, even though you have failed the test of affordability for a new mortgage. By definition, you are only going to remortgage if it is better than your previous mortgage, so it must be beneficial to you. All the advice we and the Treasury have had is that, if you are trying to remortgage with another party, you run into this trap. Now, this is just silly.[16]

[15] Treasury Committee, Oral evidence: The work of the Financial Conduct Authority, HC 475, 13 June 2018 (PDF), Q317

[16] Treasury Committee, Oral evidence: The work of the Financial Conduct Authority, HC 475, 13 June 2018 (PDF), Q320

In a letter to the Committee in July 2018, Andrew Bailey explained that while the EU's Directive applied across Europe, the differences between mortgage markets across Europe meant that this problem was largely limited to the UK:

> Currently, most mortgage products sold in the UK comprise a short-term introductory deal after which the rate changes to a reversion rate, often a standard variable rate (SVR). Moving to a reversion rate often involves an increase in interest rate and therefore in mortgage payments. At this point it is usually in a consumer's interest to switch to a new mortgage product, either with their existing lender (an internal switch) or a new lender (an external switch).
>
> [...]
>
> The UK's unique mortgage market coupled with the impact of the financial crisis has created the conditions for mortgage prisoners. Major changes to lending practices in the UK since the crisis, and the necessary regulatory changes to prevent a return to past poor practice have meant that some consumers have found themselves unable to switch. We are focused on finding solutions for mortgage prisoners who have pre-crisis mortgages, and those who have met their repayment obligations.[17]

In October 2018, Andrew Bailey told the Committee that the FCA and the Treasury disagreed with the EU's denial that the situation had arisen from the Directive:

> **Andrew Bailey:** ... There is a peculiarity of EU law in that respect.
>
> **Charlie Elphicke:** They deny that. The EU Commission issued a statement denying that.
>
> **Andrew Bailey:** They do, but I have been round this and the Treasury has been round this with lawyers. The issue is this. To use a non-technical term, it is bonkers, but here we are. Let's say you have a mortgage today and you want to refinance it at a lower cost. You can refinance it within a firm and escape the sorts of traps of the EU mortgage credit directive. If you go to another mortgage lender, you have to have an affordability assessment. The interpretation in the directive is that, if you fail the test of affordability for the new mortgage, you cannot move. That is bonkers because, by definition, if you fail the new one, you must be failing the current one and the new one must be cheaper than the current one, because why else would you be going there?
>
> I have to say this is one of the slightly depressing things about Brexit, I have to be honest with you, and this was very live coming into this. We were reasonably hopeful—and "we" includes the Treasury—that we were going to get the EU to move on this and sort it out. It is very difficult, and they cannot be bothered, to run a UK-specific argument in Europe. I know that they say that the UK is misinterpreting this. I have to tell you, and you can ask the Treasury this question, we have been around this a lot of times with lawyers and never got the joy.[18]

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17 Treasury Committee, Correspondence with the Chief Executive of the FCA relating to mortgage prisoners (PDF), 24 July 2018

18 Treasury Committee, Oral evidence: The work of the Financial Conduct Authority, HC 475, 31 October 2017 Q136-137

On 18 November 2018, John Glen, the Economic Secretary, wrote to Nicky Morgan, the then Chair of the Treasury Committee, saying that the Treasury had encouraged active lenders to write to "trapped borrowers" to notify them of their options – which effectively meant that they could be offered better deals from the **same** lender. He assured the Chair that

> ...exploring solutions for these customers is a top priority. That is why officials are working closely with the FCA who are exploring what more could be done as part of their Mortgage Market Study. It is also why if necessary the Government is prepared, once it is able to amend the repatriated Mortgage Credit Directive, to explore legislative solutions.[19]

2.2 Commons debate, June 2019

Charlie Elphicke (Conservative) led a backbench debate on mortgage prisoners on 6 June 2019.[20] At the time, the FCA was consulting on proposals for a modified affordability assessment, as discussed in the next section.

He highlighted the fact that the Treasury still held 35,000 mortgages via UKAR and that it was possible that both Tesco Bank and Metro Bank might sell on their mortgage books. There was no guarantee that and of these could not be sold to unregulated lenders.[21]

While the FCA was consulting on a new approach to the affordability assessment, he argued that that approach didn't go far enough: it should be an obligation rather than an option for the banks to take affected customers on "without any regulatory penalty". He added that the Treasury also needed to "take responsibility" for its overall approach to selling mortgage books:

> ...the Treasury should be making sure there are the proper protections so that borrowers do not unfairly lose out. It claimed it did that in the case of Cerberus, but that turned out to have certain shortcomings—something I think the Treasury Select Committee should look into. It is wrong for the Treasury to pursue the highest amount of cash at the expense of vulnerable borrowers who have been placed in a worse position than otherwise would have been the case.
>
> Moreover, if the Treasury is willing to sell mortgage books to vulture funds, what is to stop the likes of Tesco, Metro Bank and many others following that example? That is why we need to consider a wholesale ban on selling these mortgages to unregulated firms—full stop. The best way to achieve that is through the regulation of the whole industry. Regulating mortgages—all mortgages—will ensure that all customers are treated more fairly by mandating best practice in each and every case. That might mean that when books are sold off a little less is achieved because they cannot enjoy the fruits

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19 Letter from John Glen to Nicky Morgan: Trapped Borrowers and UK Asset Resolution, 12 November 2018

20 HC Deb 6 June 2019 [Mortgage Prisoners]

21 HC Deb 6 June 2019, c335-336

> of regulatory arbitrage, but it will mean that vulnerable people get better protections and are more safely and carefully looked after.[22]

Rushanara Ali (Labour) supported the call for more government action, suggesting that further legislation might be needed[23], a view endorsed by George Eustice (Conservative).[24]

Martin Whitfield (Labour) denounced the “blame game” regarding interpretations of the EU Directive, and instead pointed to the “reality” that “vulture funds” like Cerberus were able to enjoy “exploitative profiteering”.[25]

Calling for banks to be held responsible, Kevin Hollinrake (Conservative), Co-Chair of the APPG on Fair Business Banking, reminded the House that the banks’ approach to offering mortgages in the UK had created the situation in the first place. The Government had later bundled together mortgages held by failed banks and sold them on to “a vulture fund”. He argued that this was a “short-term” approach, because “surely the problems will return in other areas of the economy, putting pressure on public services—mental health pressures, housing benefit or other things.”[26]

Alison Thewlis (SNP) agreed with the points made by the other speakers. She referred again to the need to regulate the actions of the banks, but cautioned against going too far:

> …we should not throw the baby out with the bathwater. Regulation should provide a framework for improving consumers’ experiences and for increasing competition in the market, not tying consumers to one onerous regime of payments.

Responding to points made during the debate, John Glen, the Economic Secretary, noted that the FCA’s proposed changes would see the affordability assessment for mortgages move from “being absolute to relative”, and would “enable lenders to accept switching consumers, providing they are up to date with repayments and are not borrowing more.”[27]

He went on to outline the Government’s future approach to the sale of mortgage books:

> Let me turn to the Government’s sales of mortgage books to purchasers that are not active lenders… It is regrettable that the Government have not received any reasonable bids from active lenders, with feedback suggesting that they have limited appetite for these loans. However, I would like to make it clear to the House that the administrators of these mortgage books must be FCA-regulated, regardless of whether they are active lenders. Any consumer whose mortgage is held by one of these firms has full recourse to FCA protections, including treatment in accordance with the FCA’s “treating

22 HC Deb 6 June 2019, c337
23 HC Deb 6 June 2019, c336
24 HC Deb 6 June 2019, c342
25 HC Deb 6 June 2019, c347
26 HC Deb 6 June 2019, c358-359
27 HC Deb 6 June 2019, c370

customers fairly" principles, and the ability to complain to the Financial Ombudsman Service.

I have heard the comments about borrowers having their reversion rates drastically increased. To safeguard against this during asset sales, the Government have put in place contractual protections that have been enhanced to ensure that the terms and conditions of the original loans are honoured and, in the latest asset sale, to ensure that future rate rises are in line with the rates charged by the largest active lenders. This means that a customer will be treated broadly the same as if their mortgage was with an active lender, with payments in accordance with their original contract terms.

[…]

In these sales, the Government also stipulate that there must be no financial barriers put in place to harm a consumer's ability to switch to a new deal with another lender. Once this FCA rule change is implemented, consumers will be in a better position to change their mortgage, provided that they are up to date with their payments and meet lenders' risk appetites.[28]

[28] HC Deb 6 June 2019, c371-372

3 2019: A new affordability assessment

In December 2016 the FCA launched a study of the mortgage market, focusing on areas where competition could potentially be improved for the benefit of consumers.[29] In May 2018 it published an interim report.[30] One of the issues highlighted was whether consumers who did not or could not switch their mortgage were being treated fairly.

As a result, in October 2019, the FCA introduced new rules to enable some mortgage prisoners to switch to a better deal. They allowed lenders to use a different affordability assessment for customers who meet certain criteria including:

- being up to date with payments under their existing mortgage
- not moving to a new house
- not borrowing more (except to finance certain fees)[31]

The FCA also confirmed that inactive lenders and unregulated firms (which were by definition not authorised for mortgage lending) would be required to tell their customers about the changes and that it had become simpler and easier for them to switch to another lender.

It is important to note that the rules gave lenders **the option** to apply the modified assessment – **they were not required to use it**. This meant that lenders would have to engage with the new rules if the customers were to benefit.

3.1 How many mortgage prisoners were there?

In November 2019, just after it introduced the new rules, the FCA estimated that there were about 250,000 people whose mortgages were in "closed mortgage books" or held by a creditor not regulated by the FCA.[32] Of these:

> - ...[A]round 170,000 of these borrowers are up-to-date with payments and would be eligible to switch because of our new rules.

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29 Financial Conduct Authority, Mortgages market study: MS16/2, 12 December 2016 (accessed 13 December 2021)

30 Financial Conduct Authority, Mortgages market study: interim report (MS16/2/2), May 2018

31 Financial Conduct Authority, FCA confirms help for mortgage prisoners, 28 October 2019 (accessed 13 December 2021)

32 As discussed later in this briefing, even with broad agreement about numbers affected, different stakeholders have used various definitions of which count as "mortgage prisoners".

- Over half of the group that are eligible are paying interest of 3.5% or less. 39% are paying an interest rate of less than 3.0%.
- Of those eligible to switch, 40,000 have less than £50,000 to repay, many of whom have less than 10 years remaining on their mortgage.
- Both these sets of borrowers may find limited value in switching depending on the deals we find.
- We estimate around 14,000 eligible mortgage prisoners should be both likely to meet commercial lending criteria and stand to make a meaningful saving.

The FCA estimated that even if lenders did engage, the change would only help about 14,000 (under 10%) of mortgage prisoners.[33]

3.2 Why would so few benefit?

The FCA concluded that many borrowers "may find limited value in switching depending on the deals we find". It added that those already "paying lower rates, with smaller amounts to repay and those with interest-only mortgages may find it challenging to find lenders willing to offer cheaper deals."

It noted:

> Some borrowers' circumstances, such as being in negative equity or having other debts, will mean they will be outside of any lender's credit risk appetite. Other borrowers, almost 40,000, have mortgages with terms that are close to ending or that are too small to be attractive lending prospects for some lenders.

In particular, over 90,000 (56%) of borrowers were on interest-only mortgages. The FCA thought that "lenders are likely to want these borrowers to demonstrate a credible strategy for repaying the balance at the end of the mortgage term, which may be difficult for many."[34]

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33 Financial Conduct Authority, Understanding mortgage prisoners, 17 January 2020 (accessed 13 December 2021)

34 Financial Conduct Authority, Understanding mortgage prisoners, 17 January 2020 (accessed 13 December 2021)

4 Progress (or not) with the new approach

While the October 2019 changes opened up some possibilities, progress for many would depend on wider action by lenders.

In January 2020, the FCA reported a limited response on the part of the industry. It noted that although medium and small lenders had engaged with the approach, "there has been disappointingly little interest or engagement from the major mortgage lenders."[35]

The All-Party Parliamentary Group (APPG) on Fair Business Banking criticised large lenders' failure to respond. Kevin Hollinrake, Co-Chair of the APPG said:

> It is deeply cynical to laud your Corporate Social Responsibility policies and then refuse to implement guidance from the regulator. It appears that some banks seem determined to evade their clear responsibilities to be good citizens. We call on the Government to intervene to force banks to do the right thing and to prevent any bank from selling off their loan books in future to unregulated vulture funds.[36]

The APPG continued to raise concerns about the limitations of the approach and regulatory responses with the FCA.[37]

In March 2020, though, the onset of the coronavirus pandemic swiftly upset expectations, leading to new uncertainties and priorities. On 20 March the FCA introduced repayment holidays for people struggling to pay mortgages as a result of the impact of the pandemic. Repossessions were also suspended for certain households for three months. Both these measures were subsequently extended to October 2020.[38]

In May, the FCA extended the deadline for lenders to contact mortgage prisoners about switching to 1 December 2020. It noted that the pandemic had led to a reduction in available mortgage products overall, so many mortgage prisoners would find it very difficult if not impossible to switch. In October, the deadline was extended again to 15 January 2021.[39]

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35 MoneySavingExpert, "Major lenders show 'little interest' in helping mortgage prisoners switch", 20 January 2020 (accessed 14 December 2021)

36 Fair Business Banking APPG, "Reaction to UK Finance statement on FCA mortgage prisoner data", 20 January 2020 (accessed 14 December 2021)

37 Mortgage Solutions, "MPs meeting FCA chief to urge more action on mortgage prisoners", 10 February 2020 (accessed 14 December 2021)

38 Financial Conduct Authority, Mortgages and coronavirus: updated guidance for firms, 17 August 2020 (accessed 14 December 2021)

39 Financial Conduct Authority, Implementation group on changes to deliver switching options for mortgage prisoners, 28 June 2021 (accessed 14 December 2021)

5 2020: Statement on progress and new proposals

In July 2020, the FCA published a statement[40] setting out what it had done for mortgage prisoners. It noted that although many might benefit by switching, comparatively few had done so. This inaction was shared by a large proportion of mortgage-holders – whether prisoners or not – and it hoped to investigate reasons for this once the overwhelming effects of the pandemic abated.

It went on to highlight joint working with the Money and Pensions Service to support mortgage prisoners who were behind with their payments.

It also launched a consultation on proposed changes to help some mortgage prisoners. Those changes would:

- make it easier for mortgage prisoners to move to new deals from their existing provider (although, as noted above, many mortgages are from inactive providers)
- help some mortgage prisoners "with maturing interest-only and part-and-part mortgages" to delay payment until 31 October 2021, given the challenges arising from the pandemic.

Those proposals were introduced in October 2020 and expired on 31 October 2021.[41]

The APPG on Mortgage Prisoners welcomed the proposed changes, although it argued that they would still not help thousands. It called on the FCA to impose a limit on interest rates for mortgage prisoners.[42]

40 Financial Conduct Authority, Statement on mortgage prisoners and consultation on intra-group switching and maturing interest-only and part-and-part mortgages, 28 July 2020 (accessed 14 December 2021)

41 Financial Conduct Authority, PS20/11: Removing barriers to intra-group switching and helping borrowers with maturing interest-only and part-and-part mortgages, 8 September 2020 (accessed 14 December 2021)

42 APPG on Mortgage Prisoners, FCA action on interest-only mortgages is welcome but mortgage prisoners need a cap on rates, 31 July 2020 (accessed 14 December 2021)

6 Wider stakeholder initiatives

6.1 Potential legal action

In December 2019, a specialist litigation firm, Harcus Parker, announced no-win, no-fee legal proceedings on behalf of mortgage prisoners "to reclaim the difference between the high interest they have paid on their mortgages and the interest they would have paid if the rate had been set by their lender at a lower 'fair' level."[43]

The law firm's proposal is promoted on the UK Mortgage Prisoners website, but there is little further information about the proposal or its progress available.

6.2 LSE research report

Martin Lewis of MoneySavingExpert announced in February 2020 that his charitable foundation was funding a study to "find evidence-based policy solutions, which will push the Government to step in and rescue the mortgage prisoners that the financial regulator can't reach." He said:

> "It's time the Government accepted the responsibility to find a solution for these vulnerable consumers. Its failure to do so is short-sighted. It doesn't just fall on the individuals, it falls across society."[44]

John Glen, the Economic Secretary, wrote to Martin Lewis on 13 February, noting that he looked forward to reviewing the findings of the study. But he cautioned:

> I am keen that your exercise is productive and does not simply end up raising false hope by outlining solutions that sound attractive but on closer inspection are either unworkable or unfair.
>
> My officials and I will take any new proposals under full consideration if they meet our strict requirements that they a) deliver value for money for government (not just individuals), b) are a fair use of taxpayer spending, and

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43 Harcus Parker, Mortgage prisoner litigation (accessed 14 December 2021)

44 MoneySavingExpert, "Martin Lewis to fund large-scale research to help free 170,000 mortgage prisoners", 4 February 2020 (accessed 14 December 2021)

> c) address any risks of moral hazard (eg, how to define who should receive financial support relative to other renters and mortgage borrowers).[45]

The report from the study – "Releasing the mortgage prisoners"[46] – was published in November 2020. Written by a team led by Kate Scanlon of the London School of Economics, the report highlighted the severe effect of circumstances on mortgage prisoners' wellbeing. It noted that while both UKAR and the FCA had recognised the problem, the actions taken to date had only helped a small minority of those affected. The coronavirus pandemic had only made their situation worse. The report concluded:

> There is a strong case for a wider variety of solutions. The choice of measure(s) depends on the policy goal. This is usually seen as reducing mortgage payments, but the overall goal should be reducing harm by preventing defaults, keeping people in their homes and mitigating overall debt problems (including other types of debt). The solution(s) that will work for each prisoner depend on their particular circumstances, including both the characteristics of their existing mortgages (interest-only or repayment; loan-to-value ratio [LTV]; term, etc.) and their personal situation — especially the type and amount of other debt.[47]

As well as recommending better information and funding for debt counselling and advice, the report advocated a "wider range of solutions", including:

- government equity loans, which might help some mortgage prisoners to pass stress tests
- government equity loans combined with an element of loan write-off
- "mortgage rescue", in which homes could be sold to housing associations and former mortgage-holders allowed to stay on as tenants
- bringing the owners of closed books into the FCA's regulatory perimeter (similar to what had been done in Ireland)
- capping very high standard variable interest rates on closed books.

The report concluded by highlighting that given its responsibility in creating the problem, there was an "ethical case" for the Government to "bear proportionate responsibility for resolving the situation".[48]

In response to the report, Seema Malhotra, Co-Chair of the APPG on Mortgage Prisoners, reiterated the APPG's call for a cap on standard variable rates and for the Government to "expand the powers of the FCA so that it can protect customers who have their mortgages owned or influenced by unauthorised firms and vulture funds."[49]

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45 MoneySavingExpert, "Treasury Minister replies: 'Martin, I'll listen to your mortgage policy plans, but I've lines you can't cross'", 2 March 2020 (accessed 13 December 2021)

46 Kath Scanlon et al., Releasing the mortgage prisoners: final report, LSE, November 2020 (PDF)

47 Kath Scanlon et al., Releasing the mortgage prisoners: final report, LSE, November 2020 (PDF), p7

48 Kath Scanlon et al., Releasing the mortgage prisoners: final report, LSE, November 2020 (PDF), p23-27

49 APPG on Mortgage Prisoners, "APPG reaction to LSE Mortgage Prisoner Report", 11 November 2020 (accessed 14 December 2021)

While the Economic Secretary said on 17 November that the Government was "grateful to London School of Economics (LSE) and Martin Lewis for their contribution to this conversation", he also noted that he would continue to monitor the impact of the FCA's actions.[50] In February 2021, though, he noted that customers of inactive lenders paid on average only 0.4 percentage points more than those with active lenders, so capping mortgage prisoners' SVRs might "create harm in other parts of the market, and we do not recommend it." He noted that the LSE report itself had recognised such a risk.[51]

6.3 UK Mortgage Prisoner Action Group report

In March 2021 the UK Mortgage Prisoner Action Group built on the impetus with its own report. "Setting the record straight"[52] was strongly critical of the Government's and the FCA's responses.

The report highlighted what it saw as a "false narrative" that had engineered an unreasonable shift of blame from lenders onto customers. It challenged many of the assertions made by the Government and the FCA, arguing for instance that:

- the Action Group was aware of only 40 mortgage-holders who had benefited from the FCA's new affordability criteria
- mortgage prisoners had paid an average of 1.33 percentage points above mean market SVRs for over a decade, rather than the 0.4 quoted by the FCA
- freeing the mortgage prisoners would allow them to reduce mortgage rates by up to 3 percentage points.

It concluded that "the situation…is a direct result of an aggressive and profiteering policy by the Treasury to return the books to private ownership to the detriment of hundreds of thousands of families in the UK."[53]

The report made the following recommendations:

> - Capping the SVR in closed books will provide tangible immediate relief to the hundreds of thousands of mortgage prisoners.
>
> - Implement LSE recommendation to introduce a Government backed equity scheme so many more can at remortgage away from their closed book.
>
> - Introduce a Government backed mortgage product specifically for mortgage prisoners so if the open mortgage market doesn't come forward to help, mortgage prisoners will still be able to remortgage and

50 UIN 115040, 12 November 2020
51 UIN 145088, 28 January 2021
52 UK Mortgage Prisoner Action Group, Setting the record straight, March 2021
53 UK Mortgage Prisoner Action Group, Setting the record straight, March 2021, p3-6

transition to the mainstream. This must include a solution for those on Interest Only mortgages whose mortgages will be reaching maturity in the next 5 years and those in arrears due to the fact that they have been paying extortionate interest rates.

- Credit mortgage balances with the overpayments that mortgage prisoners have been paying for the past decade…
- Stop overcharging for arrears management.
- Adjust credit files that have been impacted from years of overcharged interest.
- FCA to conduct a review of active books to ensure they are following guidelines on outlier rates.[54]

[54] UK Mortgage Prisoner Action Group, Setting the record straight, Mach 2021, p6

7 Parliamentary consideration in 2021

7.1 Debate during the passage of the Financial Services Bill

The question of mortgage prisoners was raised in ultimately unsuccessful amendments to the then Financial Services Bill, now the Financial Services Act 2021.

Lord Sharkey (Liberal Democrat and co-chair of the APPG on Mortgage Prisoners) proposed two amendments:

- 21, that would require authorised and regulated lenders to impose a cap on the standard variable rates interest rates charged to mortgage prisoners "and to ensure that mortgage prisoners can access new fixed interest rate deals at an interest rate equal to or lower than an interest rate specified by the FCA." The cap would be set at 2 percentage points above the Bank of England base rate.[55]

- 37B, that would give all mortgage prisoners who met certain conditions access to "a fixed rate mortgage…on terms no less favourable than mortgages offered to consumers who are not mortgage prisoners and have broadly similar creditworthiness characteristics."[56]

Introducing the amendments, Lord Sharkey lamented the fact that while mortgage prisoners were "subject to real, undeserved and unwarranted financial pressure… the Government and the FCA seem intent on minimizing the problem and are engaged in what seem to me to be futile and unproductive arguments with the mortgage prisoners over exact figures…I have heard no admission from the Government that they caused the problem in the first place—and no admission of moral responsibility for devising a proper, just and timely solution."[57]

Baroness Noakes (Conservative) cautioned against "leaping to further solutions" until more data was available about the success of the FCA's 2019 rule changes. She questioned the reliability of the alternative calculations

55 HL Bill 162-R-II(Rev) Revised second marshalled list for Report, 12 April 2021, p5

56 HL Bill 162-R-III Third marshalled list for Report, 14 April 2021, p6. The conditions were that mortgage prisoners should have arrears of not more than one payment over the preceding year, a remaining mortgage term of at least two years, an outstanding loan amount of at least £10,000, and having had consent to let the property concerned.

57 HL Deb, 14 April 2021, c1401

presented by the Mortgage Prisoner Action Group, as well as the practicality of the "fairly vociferous demand" for a cap on SVRs. She criticised the amendments for proposing to instruct lenders about whom they should lend to, and under what conditions – a situation that would be "chilling" for the industry. She went on to question the wisdom of overriding lenders' own judgements about risk, asserting that this would be a "a slippery slope to moral hazard". She concluded:

> Ministers have said clearly that they want to find a solution for mortgage prisoners. In fact they probably need multiple solutions because there are several problems at work within the mortgage prisoner population. Solutions that might seem right for one category of borrower may well have repercussions across other parts of the mortgage market or other retail lending markets. It would be incredibly foolish to legislate without a full understanding of these issues. I hope the proposers of the amendments will accept that we should leave it to the Treasury and the FCA to work out practical solutions to these problems.[58]

Several other Peers contributed to the debate, variously highlighting the frustrations of mortgage prisoners' experience and the responsibility of the Government, or reiterating the Government's position about the risks involved in intervening in the market and need to await further analysis. The Lords ultimately passed Amendment 21.[59]

As expected, the Government rejected the amendment to the Bill. Earl Howe summarised the Economic Secretary's reasons to the Lords:

> As the Economic Secretary set out on Monday, the reason these borrowers are unable to switch is not that their mortgage is with an inactive firm; it is that they do not meet the risk appetite of lenders. For example, they may have a combination of high loan-to-value, be on interest-only mortgages with no plan for repayment, asor have higher levels of unsecured debts, non-standard sources of income or a poor credit history. Similar borrowers in the active market are also very unlikely to be offered deals with new lenders.
>
> [...]
>
> So, at the most basic level, I just do not think it is right to introduce such a significant intervention for those with inactive lenders which could cut their mortgage payments far below the level of someone in a similar financial situation who happens to be with an active lender. Nevertheless, while the Government are opposing this amendment today, I want to reiterate our commitment to finding any further practical and proportionate options for affected borrowers, supported by facts and evidence. [60]

Lord Sharkey expressed his disappointment at the Government's position, reiterating the continuing serious difficulties facing mortgage prisoners and highlighting what he saw as the Government's continued failure to take responsibility for the problem. He concluded by noting that restrictions on

58 HL Deb, 14 April 2021, c1403-1405
59 HL Deb, 14 April 2021, c1405-1416
60 HL Deb, 28 April 2021, c2308-2309

repossessions would shortly end and that people risked losing their homes while "a comprehensive solution" was still being sought.[61]

7.2 Treasury Committee

As part of its oversight of the work of the FCA, the Treasury Committee returned to the question of mortgage prisoners in May 2021.

Nikhil Rathi, Chief Executive of the FCA, reminded the Committee of the arrangements put in place in 2019 and indeed of some of the limited progress. Referring to some of the continuing difficulties, he suggested that resolution was now likely to be a matter for the Government rather than the regulator:

> The other issue we have is that a very substantial portion of these consumers are on interest-only mortgages, and many may not have a repayment plan. That was the framework of the market in the early 2000s, when mortgages without a repayment plan other than sale of property were permitted. That is not how the majority of retail lenders work today in interest-only mortgages. That is a particularly challenging issue that cannot simply be solved by a , regulation, which is why I think it is something for Parliament to consider.[62]

In response to further questions from Anthony Browne about whether the FCA could "compel inactive lenders to charge a more reasonable market rate of interest, rather than penalty rates of interest to trapped mortgage people who are in arrears or other circumstances", he again emphasised that the FCA had reached the limit of what it could do:

> We do not have that power, and obviously Parliament rejected that amendment to the Financial Services Bill a few weeks ago. It is not a power we have, and it is not one that Parliament took.
>
> […]
>
> I am saying that we will try to understand what is happening with the data and we will try to make sure that all options are tested, but as I understand it, it will be a Treasury review, because obviously the levers are primarily for the Government to consider. I think it was also the finding of the report by the London School of Economics that, at this stage, these are now matters for the Government, because some of the solutions are fiscal solutions.[63]

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[61] HL Deb, 28 April 2021, c2310-2312

[62] Treasury Committee, Oral evidence: Work of the Financial Conduct Authority, HC 146, 12 May 2021, Q171

[63] Treasury Committee, Oral evidence: Work of the Financial Conduct Authority, HC 146, 12 May 2021, Q175-176

8 The FCA's November 2021 review

The FCA's Mortgage Prisoners Review[64] was published at the end of November 2021.

The FCA acknowledged the sensitivity of the matters considered in the opening to its statement on the purpose of the review:

> We understand the difficult circumstances that mortgage prisoners are in. That's why the Government asked us to provide data to help them consider whether there are practical and proportionate solutions to help these borrowers. Our review provides this data.

It went on to state:

> The Government and industry will use this review to consider if there are further practical and proportionate solutions for mortgage prisoners. We will continue to support them to do this and we will focus on those areas in the market where we identify the greatest harm which could affect mortgage prisoners and other borrowers. [65]

Most of the body of the 140-page report is made up of presentation of data, methodology and analysis. It also provides an overview of actions that the FCA has undertaken to support mortgage prisoners.

The following sections present some of the main themes emerging from the review, as well as wider reactions to them.

8.1 How many people are affected?

The FCA calculated that on 30 June 2021, there were 195,000 mortgages in closed books. This was made up as follows:

- 66,000 who may be able to switch. Where borrowers have not yet tried to switch, consumer organisations or a mortgage intermediary may be able to help them assess whether they can save money, or otherwise benefit, by switching…
- 30,000 who can't switch but are unlikely to benefit from switching. They are up to date with payments but can't switch because of their loan and/or borrower characteristics. However, the interest rate they're on

[64] Financial Conduct Authority, Mortgage Prisoner Review, CP576, 29 November 2021

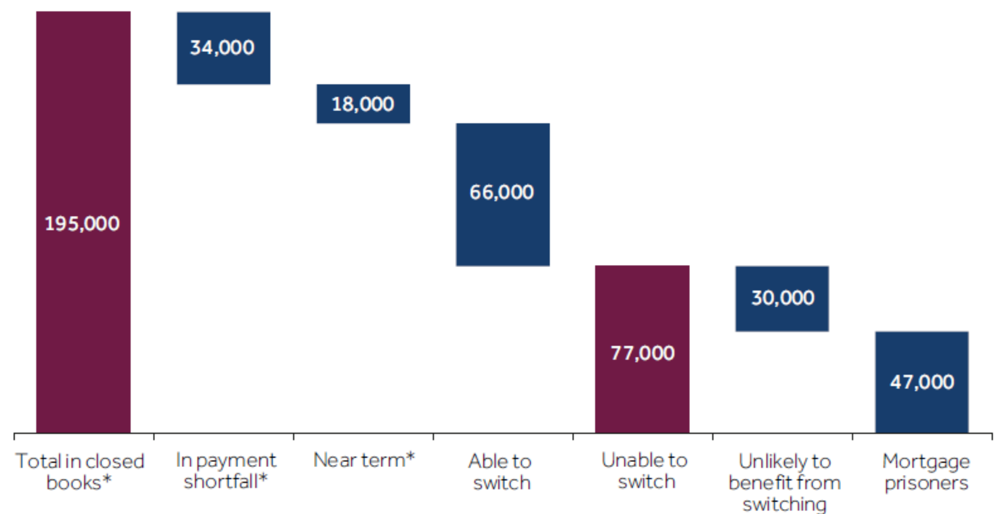
[65] Financial Conduct Authority, "Mortgage prisoner review" (news story), 29 November 2021 (accessed 16 December 2021)

means they'd be unlikely to save money from switching- so they aren't mortgage prisoners.

- 47,000 who are mortgage prisoners. Despite being up to date with payments, they cannot switch when it might benefit them to do so, because they have loan and/or borrower characteristics that are outside current lender appetite.

- 34,000 who are in payment shortfall, and 18,000 who are near term. These borrowers wouldn't be able to switch to a new deal, even if they were with an active lender.[66]

The report includes a visual presentation of the figures and their breakdown[67]:



This compares with the 250,000 people affected in 2019.

What is perhaps most notable is the clarification of the FCA's definition of "mortgage prisoner". The report explicitly describes a mortgage prisoner as:

> ...a borrower who is up to date with payments and:
>
> - is unable to switch to a new mortgage deal (with a new lender or with their existing lender) and
>
> - could potentially benefit from switching depending on their loan and borrower risk characteristics.[68]

It went on to note:

> We include the second part of the definition because lenders price mortgages based on credit risk. So when we assess whether a borrower who cannot switch is a mortgage prisoner, we consider how likely it is that they would be able to switch to a cheaper deal, given their loan and borrower characteristics, if they

66 Financial Conduct Authority, Mortgage prisoner review, 29 November 2021
67 Financial Conduct Authority, Mortgage prisoner review, 29 November 2021, p13
68 Financial Conduct Authority, Mortgage prisoner review, 29 November 2021, p9

> could switch. We consider the rate they pay and do not classify those paying low rates for their circumstances, as mortgage prisoners.[69]

While the explanation acknowledges that other stakeholders use different definitions, the apparent restriction of the term has led to criticism.

Sarah Coles of Hargreaves Lansdown, for instance, questioned this reasoning, noting that many of those who are behind on payments are in such a situation simply because they are still paying much higher rates, particularly on interest-only mortgages.

In addition, she suggested that age may be a factor that makes many mortgage prisoners unattractive propositions for other providers:

> "Almost twice as many people with inactive lenders are over the age of 56 (35.3%), and almost four times as many are aged 76 or over (2.1%).
>
> "Having big outstanding balances at a later age makes the task of finding an alternative to switch to even harder."[70]

With regard to the question of mortgage shortfalls, though, the FCA's analysis found no link between the level of interest rates and the incidence of payment shortfalls among those in closed books with inactive firms.[71]

The UK Mortgage Prisoners Action Group does not appear to have commented on the FCA report so far. In July 2021, however, it highlighted concerns about previous assumptions that had influenced data and indeed the debate on the Financial Services Bill.

Its "initial concerns" included the following:

> - The existing data (250,000) is based on assumptions and not an accurate reflection of the current number of 'inactive' mortgage prisoners.
> - There are other cohorts of mortgage prisoners within the 'active' market that are being excluded from any FCA data analysis and yet they are just as, if not more, important.
>
> [...]
>
> - It is not appropriate for the FCA to make comparisons between the characteristics of mortgage prisoners with borrowers displaying similar characteristics in the active mortgage market. The characteristics may be the same but the causes are very different, e.g. for mortgage prisoners the impact of paying high interest rates for a decade as opposed to financial complacency.

69 Financial Conduct Authority, Mortgage prisoner review, 29 November 2021, p9
70 The Motley Fool, "The UK has 50,000 mortgage prisoners: are you one of them?", 1 December 2021 (accessed 16 December 2021)
71 Financial Conduct Authority, Mortgage prisoner review, 29 November 2021, p12

- For borrowers who now find themselves in arrears and / or with bad credit histories, it is more important for the FCA to understand how and why this happened and do all they can to help them move forward, not leave them as they are, trapped and vulnerable.[72]

8.2 The effectiveness of the FCA's actions

The report found that the modified affordability assessment introduced in 2019 had had a "limited" effect. Perhaps most importantly, the new arrangements appeared to have led to only about 200 mortgage switches. The main findings were as follows:

- Lenders have had a limited appetite to offer these options.
- Of the small number of borrowers who applied to lenders the majority have borrower and loan characteristics that do not meet lenders' credit risk appetites.
- Our data indicates that around 200 borrowers have been directly helped to switch to a new deal as a result of these changes.
- Borrowers do not always engage with switching. For example, in response to 140,000 letters sent about potential switching options, the Money and Pensions Service (now known as MoneyHelper) received 534 calls and mortgage intermediaries received 702 calls. There will also have been some overlap between these calls.[73]

The report then noted that "over 2,000" mortgage-holders on inactive books appeared to have been able to switch even without the modified assessment. It speculated as to whether the FCA's wider activity might have helped to prompt this. It also reiterated the constraints on firms' plans resulting from the pandemic. But the report offered little update on the effectiveness of its changes to the intra-group switching rule beyond noting that "most, but not all, borrowers in this situation have, or will have, access to new deals."[74]

8.3 Conclusions and next steps

In its conclusion to the report, the FCA highlighted several findings.

It said that half of closed book borrowers were paying a rate of 3% or less and "95% of borrowers who have a mortgage in a closed book with an inactive

[72] UK Mortgage Prisoner Action Group, "Response to FCA Paper Mortgage Prisoners Review: Terms of Reference", September 2021

[73] Financial Conduct Authority, Mortgage prisoner review, 29 November 2021, p16

[74] Financial Conduct Authority, Mortgage prisoner review, 29 November 2021, p16

firm are paying a lower rate than they did when they first took out the mortgage."[75]

The report noted again that the FCA did not consider all borrowers in closed books to be "trapped", and that about 66,000 "should" be able to switch – and it highlighted that consumer organisations and consumer intermediaries might be able to help more to do so.[76]

As to the 47,000 who fit the FCA's focused definition of "mortgage prisoners", the FCA noted that it appeared that many had "characteristics of vulnerability". It hoped that by reviewing data published in the report lenders might consider amending their criteria to benefit those "close to the risk appetite of lenders…using the using the modified affordability assessment if appropriate."

Finally, the report highlighted steps that those mortgage-holders affected might take for themselves, including improving their credit scores, paying down interest-only balances, and seeking support from debt advisers or mortgage intermediaries to consider "alternative options" or "very difficult decisions such as downsizing."[77]

As to next steps, the report reiterated that it was intended to help Government and the mortgage industry "to consider if there are further practical and proportionate solutions that will enable these borrowers to switch their mortgage where they would benefit from doing so", although the FCA would support those efforts.[78]

75 Financial Conduct Authority, Mortgage prisoner review, 29 November 2021, p17
76 Financial Conduct Authority, Mortgage prisoner review, 29 November 2021, p17
77 Financial Conduct Authority, Mortgage prisoner review, 29 November 2021, p17-18
78 Financial Conduct Authority, Mortgage prisoner review, 29 November 2021, p19

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