

EBA/CP/2014/43 Draft Guidelines on arrears and foreclosure

**Response by the Council of Mortgage Lenders
to the European Banking Authority**

Introduction

1. The CML is the representative trade body for the residential mortgage lender industry that includes banks, building societies and specialist lenders. Our 125 members currently hold around 95% of the assets of the UK mortgage market. In addition to lending for home-ownership, the CML members also lend to support the social housing and private rental markets.
2. We are pleased to be given the opportunity to respond to the European Banking Authority (EBA) consultation on [draft guidelines for arrears and foreclosure](#).
3. This consultation response does not address the questions raised in the consultation document by the EBA and instead focusses on a limited number of issues specific to the UK mortgage market.
4. The CML has no objection to the EBA disclosing this consultation response paper to any person who requests it or to make it generally available on a website.

General comments

5. Mortgage lenders in the UK already have robust regulatory requirements which must be adhered to when managing arrears and possessions (foreclosure). These requirements are broadly aligned to the draft guidelines in this consultation and therefore we do not believe that they will deliver any further benefit to UK consumers.
6. We would have preferred there were no further consultations on the MCD following the publication of the MCD itself on 4 February 2014. The UK has **already begun implementing the MCD**. Further European publications are not only disruptive to firms' implementation projects but they also create uncertainty about further supplementary considerations in addition to the MCD adopted on 4 February 2014.
7. Rather than guidelines we would prefer an approach of high-level principles, adopted across EU member states, which allow national regulators the flexibility to determine how best to apply them to their markets.

Specific comments

8. Many of the proposed guidelines are already regulated requirements within the UK mortgage market and therefore we are confident that the industry is already delivering most of the policy aims outlined within the consultation.
9. There are a few areas where we believe the wording of the guidelines could be adjusted to better reflect existing regulations within the UK and to also make the intended consumer outcome more apparent.
10. Guideline 1.1 proposes that mortgage lenders should put in place "*procedures to detect early indication of consumers going into payment difficulty.*" In the UK these are referred to as 'potential impairment indicators'. Both the [CML](#) and the [conduct regulator](#) have issued guidance to creditors to help them to facilitate such detection and so the UK is likely to be considered to be already compliant. Furthermore we have a general objection to the inclusion of this guideline as it extends beyond the objective of Article 28 of the MCD which does not reference pre-default interventions.

11. Guideline 1.4 proposes that mortgage lenders should “regularly” review “policies and procedures” in relation to Guideline 1.2. We do not believe that this Guideline offers any material benefit to consumers. We propose that this Guideline is removed altogether and is instead incorporated into Guideline 1.2. This could be achieved through the following wording:

*Guideline 1.2 - The creditor should establish policies and procedures, **reflective of prevailing regulatory requirements**, for the effective handling of and engagement with consumers in payment difficulties.*

12. Guideline 2.2 proposes that lenders “should conduct meetings”. Our assumption is that a “meeting” can be an interaction of any type including; telephone, email, letter and does not normally mean a face to face interaction. This is important as often, in order to encourage consumer engagement, the best outcomes are often achieved through less personal interactions with consumers.

13. Guideline 3.1 proposes that lenders have a “consumer engagement policy in place” in order to provide information relating to payment difficulty. We are of the belief that it is not the role of creditors to provide this information (although many do voluntarily and the voluntary approach should be retained) and should instead be provided by the advice sector. In the UK this would be the role of the [Money Advice Service](#), a statutory organisation funded by the conduct regulator through a levy on authorised firms. Providing this information through a third party ensures independence and impartiality.

14. We have no comment to make on any of the other guidelines.

Implementation timetable

15. We note the timetable for implementation of these guidelines is potentially very challenging. The FCA may need to consult on changes to its [MCOB](#) rules. Overall this is likely to take several months. This would severely impact the amount of time available to firms to implement any changes required and it is highly likely the UK will not be able to deliver these guidelines by 21 March 2016.

16. We would encourage the EBA to consider this, and the comments made in paragraph 6, when determining the implementation of these guidelines. More flexibility, or additional time, would be welcomed by UK industry.

Contact

17. We have prepared this consultation response with the input of our members. Please contact Matt Burgum (matt.burgum@cml.org.uk) with any questions or comments.