Response to FCA discussion paper DP14/2: Fairness of changes to mortgage contracts

1. As the UK's financial capability charity, we welcome the opportunity to respond to the FCA's discussion paper on the fairness of changes to mortgage contracts.

2. We believe that being on top of your money means you are more in control of your life, your finances and your debts, reducing stress and hardship. And that being on top of your money increases your wellbeing, helps you achieve your goals and live a happier more positive life as a result.

3. Our vision is for everyone to be on top of their money as a part of everyday life. So, we empower people across the UK to build the skills, knowledge, attitudes and behaviours, to make the most of their money throughout their lives.

4. We believe that financially capable people are on top of and make the most of their money in these 5 key areas:
    - Planning (including budgeting)
    - Saving
    - Debt
    - Financial services products
    - Everyday money (including wages, cash, bank accounts)

5. Taking out a mortgage is the one of the most significant and long-term financial decisions someone is likely to make during their working life, and any changes can make a material difference to their finances and ability to plan ahead.

6. The examples provided in this paper are helpful, and we agree that in each case the FCA's view on whether the change in contract terms is fair is appropriate. We particularly welcome the fact that in this consultation the FCA has gone out of its way to gather opinions from a range of stakeholders, including consumers, and this perspective should be given particular weight when determining whether a change is fair.

7. We have responded to the specific scenarios below based on our interpretation of what is 'fair' in each case. Our general comments are that the notice provided of any

change and a borrowers' ability to switch mortgage or opt out of a particular change are particularly important when determining this. It is also important to consider how those who are not able to switch mortgage because of a change in market conditions since they took out the product – those who are 'mortgage prisoners – are affected.

Question 7 – change to a Standard Variable Rate (SVR)

a) Do you agree that the factors we have listed are the most relevant in this case study?

8. We agree that the factors listed are highly relevant, although as we set out below, there are others that we feel should be taken into consideration.

b) Do you think any further factors are highly relevant to an assessment of fairness in this case study?

9. The amount of notice given before a change in the SVR is important, to give customers the opportunity to move their mortgage before the change comes into effect. This notice should be based on a realistic assumption about the time and effort required to change a mortgage contract. In this case, we consider that the notice is fair.

10. Additionally, the impact of the change on those consumers who are not able to exercise their ability to move mortgages is highly relevant. The FCA has recognised the need for particular consideration of this group with the introduction of transitional protections during the implementation of the Mortgage Market Review, and if a large proportion of a lender's mortgage book are mortgage prisoners, we would expect the treatment of this group in particular to help determine whether a change to the SVR is fair.

c) Do you agree with our view about the likely fairness of the change in this case?

11. We agree with the FCA's judgement that on the facts provided the change would be fair in this case for the reasons provided, as well as that sufficient notice has been given.

d) How would your view on fairness change with different facts?

12. In all of the alternative cases, we feel that generally the changes are still fair. A mortgage with a Standard Variable Rate would be expected to fluctuate, and while we feel that the latter two cases are not particularly 'pleasant' corporate behaviour, we don't feel that this is sufficient to make the changes unfair.

13. We do, however, believe that in the latter two cases, which are based on circumstances specific to the lender rather than wider market fluctuations, more notice would need to be provided for this to be fair. Changing a mortgage is a time-consuming process, and in the latter two cases the need to change the rate is not urgent, so it would be fair to provide customers with more time to prepare and potentially switch mortgages.

14. Our view would also change for the latter two cases depending on the treatment of ‘mortgage prisoners’. These mortgagors will be particularly vulnerable to changes to the SVR as they will be unable to mitigate its impact by using the market to move to a lower rate. We would expect a lender acting fairly to particularly consider how an increase would affect these mortgagors and take steps to address this.

Question 8 – change to a fixed rate of interest during the fixed rate term

a) Do you agree that the factors we have listed are the most relevant in this case study?

15. We agree that the factors listed are the most relevant in this case study.

b) Do you think any further factors are highly relevant to an assessment of fairness in this case study?

16. We do not feel there are any further factors that have not been set out in this case.

c) Do you agree with our view about the likely fairness of the change in this case?

17. We agree that in this case the change would be unfair, for the reasons given in the discussion paper.

d) How would your view on fairness change with different facts?

18. If the lender was in severe financial difficulties, the change would still be unfair. Mortgagors should not be held to ransom to protect depositors when a bank is in difficulty, particularly as those depositors are protected by the Financial Services Compensation Scheme.

19. On the second scenario, we find it difficult to imagine a scenario in which a lender could have clearly set out its variation term in its marketing material and offer letter while still calling the product ‘fixed-rate’. Ultimately a ‘fixed-rate’ product where the rate can change during the ‘fixed-rate’ period is not in fact a fixed-rate product, and should not be referred to as such, even if elsewhere in the marketing material the variation term is clear. Therefore the change would still be unfair.

Question 9 – Change to a feature of a mortgage: ability to rent out the property

a) Do you agree that the factors we have listed are the most relevant in this case study?

20. We agree that the factors listed are the most relevant in this case study.

b) Do you think any further factors are highly relevant to an assessment of fairness in this case study?

21. We think that the appropriate factors have been considered.

c) Do you agree with our view about the likely fairness of the change in this case?

22. We agree that the change in this case is likely to be fair for the reasons given in the discussion paper.

d) How would your view on fairness change with different facts?

23. If the marketing letter and/or offer letter did not make it clear that the lending criteria are subject to change, the change would clearly be unfair. In this case the customer could not reasonably be expected to anticipate that the feature is subject to change, and so it would not be fair to withdraw it.

24. If the firm only intended to withdraw the feature for certain categories of customer, we believe this would only be fair if this change could be evidenced based on some level of risk those particular groups of customers pose.

Question 10 – Change to a feature of a mortgage: ability to draw down additional funds against the mortgage

a) Do you agree that the factors we have listed are the most relevant in this case study?

25. Yes, we agree that the listed factors are the most relevant.

b) Do you think any further factors are highly relevant to an assessment of fairness in this case study?

26. We do not think any further factors are highly relevant in this case.

c) Do you agree with our view about the likely fairness of the change in this case?

27. In this case we agree that the change would be fair.

d) How would your view on fairness change with different facts?

28. In the example where the firm is relying on a general contract variation term to change a feature that was deliberately included and marketed, the withdrawal of that feature would only be fair if customers were able to opt out of the feature's withdrawal – i.e. that they could choose to retain the feature.

29. If the lender wanted to only limit the use of the re-draw facility for certain groups, we would expect this to be based on some form of risk analysis about the particular difficulties those groups could find themselves in were the facility not limited.

30. We also believe it would be fair for the lender to reduce unused redraw amounts down to the amounts of any voluntary repayments of principal. Most customers would not expect to be able to redraw unlimited payments of principal on a standard mortgage contract, so provided that notice of this reduction is given, it would be fair.

Question 11 – A change to terms and conditions following the takeover of one firm by another

a) Do you agree that the factors we have listed are the most relevant in this case study?

31. Yes, we agree that the factors are the most relevant.

b) Do you think any further factors are highly relevant to an assessment of fairness in this case study?

32. No, there are no further factors that we consider to be highly relevant in this case.

c) Do you agree with our view about the likely fairness of the change in this case?

33. We agree that in this case the change would be unfair. A customer should not be penalised because the lender from whom they originally borrowed has been taken over.

d) How would your view on fairness change with different facts?

34. Where Lender B will allow a customer to opt out of the proposed change, we feel this is fair. That the lender will take the withdrawal of the feature into account when dealing with customers who subsequently fall into arrears is particularly important in informing our view here.

35. If the feature was withdrawn from all customers with no exceptions, as appears to be the case in the second scenario, we feel this would be unfair. However, if Lender B agreed to make provisions for people currently on repayment holidays and those who take repayment holidays in (for example) the next 12 months, given the circumstances we believe this would be fair.

Question 12 – Do you think these factors are relevant when assessing whether a change to a regulated mortgage contract is fair?

36. We agree that all of the factors outlined on pages 24-25 are relevant when assessing whether a change to a regulated mortgage contract is fair.

Are there any other factors that you consider may be relevant in this context?

37. We believe that the ease with which customers are able to ‘avoid’ the variation, either by opting out of the change or by switching their mortgage, is important when assessing fairness. There are a number of factors particular to mortgage contracts that make this factor especially pertinent: the long-term nature of the product; the time and cost involved in switching contracts should a term change; and the level of detriment to a consumer if they are not able to keep up their repayments.

38. If a customer is unable to opt out of a change, or switch their mortgage, before the change comes into effect, it is far harder to claim that a change is fair. Therefore it is particularly important that customers are given adequate notice before changes are made, and that that protections for those who are unable to avoid the change are put in place.

If this (option 2) is your preferred option, please explain what you would welcome further guidance on

39. We believe that guidance increases clarity for consumers and lenders, and while there is no particular area in which we feel such guidance would be welcome on at present, we would generally welcome guidance on any area of mortgage lending.