

Chapter 12

Charges

12.4 Payment shortfall charges: regulated mortgage contracts

- 12.4.1** **R** (1) A *firm* must ensure that any *regulated mortgage contract* that it enters into does not impose, and cannot be used to impose, a charge or charges for a *payment shortfall* on a *customer* unless the *firm* is able objectively to justify that the charge is equal to or lower than a reasonable calculation of the cost of the additional administration required as a result of the *customer* having a *payment shortfall*.
- (2) [deleted]
- 12.4.1A** **E** The imposition of a charge for a *payment shortfall* on a *customer* who is adhering to an arrangement under which the *customer* and the *firm* agree that the *customer* will make payments of a set amount per month (or other agreed period) on agreed dates may be relied upon as tending to show contravention of **MCOB 12.4.1R (1)**
- 12.4.1B** **R** When:
- (1) a *customer* has a *payment shortfall* in respect of a *regulated mortgage contract*;
 - (2) a payment is made which is not sufficient to cover all of the amounts that are currently due under that contract and the *firm* must therefore decide how to allocate the payment; and
 - (3) as part of that decision, the *firm* is considering the respective priority to be given to:
 - (a) the current month's periodic instalment of capital or interest (or both);
 - (b) the *payment shortfall*; and
 - (c) interest or charges resulting from the *payment shortfall*,
 the *firm* must set that order of priority in a way that will minimise the amount of the *payment shortfall* once the payment has been allocated.
- 12.4.1C** **G** **MCOB 12.4.1BR** does not preclude a *firm* applying part or all of a payment received to fees and charges not resulting from the *payment shortfall* (such as ground rent settled on behalf of the *customer*).

- 12.4.1D** **G** A *firm* may recalculate the periodic instalment of capital or interest (or both), provided that any such recalculation is consistent with the *firm's* obligations under the *Handbook*.
- If a *firm* exercises a power under the terms of a mortgage contract to recalculate periodic instalments of capital or interest (or both) using a mortgage balance that includes charges (such as *arrears* management charges) or interest arising because one or more monthly instalments were missed, the *firm* does not have to keep a record of the amount of each periodic instalment of capital or interest (or both) omitting any element of such charges or interest to comply with ■ MCOB 12.4.1BR.
- 12.4.2** **G** For each type of *payment shortfall* charge (for example, a monthly *arrears* management charge), a *firm* may calculate the same level of additional administration costs and *payment shortfall* charges for all *regulated mortgage contracts* where the *customer* is in *payment shortfall*, rather than performing a calculation on the basis of the individual *regulated mortgage contract* with the particular *customer*.
- 12.4.3** **G** *Firms* are also subject to requirements on information provision and standards relating to *arrears* and *repossessions* (see ■ MCOB 13 (Arrears and repossessions)).
- 12.4.4** **R** In calculating the cost of the additional administration required as a result of a *customer* having a *payment shortfall*, a *firm* must not take into account:
- (1) the following types of costs:
 - (a) funding or capital;
 - (b) general bank charges that are not incurred as a result of a *customer* having a *payment shortfall*;
 - (c) unrecovered fees;
 - (d) advertising costs; and
 - (e) regulatory fines;
 - (2) the costs of preparing financial reports for the *firm* unless there is an objectively justifiable reason to do so and the costs relate solely to the analysis and management of accounts in *payment shortfall*;
 - (3) executive staff costs unless there is an objectively justifiable reason to do so and the costs relate to the day-to-day management of customers in *payment shortfall*.
- 12.4.5** **R** In ■ MCOB 12.4, 'executive staff' means the staff or business owners responsible for the management of the *firm's* business.
- 12.4.6** **G**
- (1) For some *firms*, their executive staff will be the executive board members.
 - (2) Executive staff costs relating to company strategy, including *payment shortfall* strategy, should not be included as costs relating to the day-to-day management of *customers* in *payment shortfall*.

- (3) General financial reporting costs, including all legal and regulatory reporting costs, should not be included as costs relating solely to the analysis and management of accounts in *payment shortfall*.

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In calculating the cost of the additional administration required as a result of a *customer* having a *payment shortfall*, the *firm*:

- (1) may, where appropriate, take into account the following types of costs:
- (a) providing information or documents;
 - (b) non-executive staff costs;
 - (c) premises costs;
 - (d) human resources costs; and
 - (e) information technology costs;
- (2) should consider the extent to which the cost of the additional administration is shared with the rest of its business; and
- (3) should, where a type of cost is absent from the lists in (1) and at ■ MCOB 12.4.4R (1), before taking it into account, consider whether it is appropriate to do so.

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A *firm* must not impose a charge for a *payment shortfall* that is calculated as a proportion of the outstanding loan.