

Chapter 13

Arrears, payment shortfalls
and repossessions:
regulated mortgage contracts
and home purchase plans

13.5 Dealing with a customer in arrears or with a sale shortfall on a regulated mortgage contract

Statements of charges

13.5.1 **R** Where an account is in *arrears*, and the *payment shortfall* or *sale shortfall* is attracting charges, a *firm* must provide the *customer* with a regular written statement (at least once a quarter) of the payments due, the actual *payment shortfall*, the charges incurred and the debt.

13.5.2 **G**

- (1) For the purpose of **MCOB 13.5.1 R**, charges that trigger the requirement for regular statements include all charges and fees levied directly as a result of the account falling into *arrears*. This includes charges such as monthly administrative charges, legal fees and interest. If interest is applied to the amount of the *arrears*, as it is applied to the rest of the mortgage, a *firm* need not send a written statement, unless other charges are also being made. If interest is applied to the amount of the *arrears* in a different manner to the rest of the mortgage then a written statement will be required.
- (2) In determining the frequency for providing statements in accordance with **MCOB 13.5.1 R**, a *firm* should have regard to the application of new charges and the number of transactions on the *customer's* account.
- (3) [deleted]
- (4) Information provided should cover the period since the last statement. *Firms* may use the annual statement to comply with **MCOB 13.5.1 R**, in which case the annual statement will need to be supplemented to include the actual *payment shortfall*.

Pressure on customers

13.5.3 **R** A *firm* must not put pressure on a *customer* through excessive telephone calls or correspondence, or by contact at an unreasonable hour.

13.5.4 **G** In **MCOB 13.5.3 R**, a reasonable hour will usually fall between 8 am and 9 pm. *Firms* should also have regard to the circumstances of the *customer* and any knowledge they have of the *customer's* work pattern or religious faith which might make it unreasonable to contact the *customer* during these hours.

13.5.5

G

In ■ MCOB 13.5.3 R, putting pressure on a *customer* includes:

- (1) the use of documents which resemble a court summons or other official document, or are intended to lead the *customer* to believe that they come from or have the authority of a court (which might in any event constitute a criminal offence under the County Courts Act 1984 or section 40 of The Administration of Justice Act 1970); and
- (2) the use of documents containing unfair, unclear or misleading information intended to coerce the *customer* into paying. A *firm* should also have regard to Section 1 of the Malicious Communications Act 1988 which establishes a criminal offence in respect of letters sent which convey a threat or false information with intent to cause distress or anxiety.

13.5.6

G

In relation to ■ MCOB 13.5.3 R, a *firm* should also have regard to the general law, including *data protection legislation*, on the disclosure of information to third parties.