MORTGAGE AND HOME PURCHASE PLAN PAYMENT SHORTFALLS (CONDUCT OF BUSINESS) INSTRUMENT 2016

Powers exercised

A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ('the Act'):

(1) section 137A (The FCA's general rules);
(2) section 137T (General supplementary powers); and
(3) section 139A (Power of the FCA to give guidance).

B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on 15 December 2016.

Amendments to the Handbook

D. The Glossary of definitions is amended in accordance with Annex A to this instrument.

E. The Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) is amended in accordance with Annex B to this instrument.

Citation

F. This instrument may be cited as the Mortgage and Home Purchase Plan Payment Shortfalls (Conduct of Business) Instrument 2016.

By order of the Board
8 December 2016

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text.

Amend the following definition as shown.

payment shortfall	~~the outstanding amount to be paid measured against the amount of payments which have become due during the term of a *regulated mortgage contract* or *home purchase plan*, including any *arrears* amount due.~~
	(1) the total sum of periodic instalments of capital or interest (or both) that have become due under the terms of a *regulated mortgage contract* but which, in breach of those terms, remains unpaid; or
	(2) the total sum of periodic payments towards the purchase price or of rent (or both) that have become due under the terms of a *home purchase plan* but which, in breach of those terms, remains unpaid.

Annex B

Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new section in MCOB 2 (Conduct of business standards: general) after MCOB 2.1 (Application). All the text is new and is not underlined.

2.1A Regulated mortgage contracts: guidance on the meaning of "payment shortfall"

2.1A.1 G A *payment shortfall* is defined in the *Handbook* as the total sum of periodic payments of capital or interest (or both) that have become due under the terms of a *regulated mortgage contract* but which, in breach of those terms, remains unpaid. For the purpose of that definition, capital includes any amounts rescheduled over the term of the loan. An amount that has been rescheduled for payment over the remaining term of the mortgage in accordance with the terms of the contract does not form part of a *payment shortfall*. If, following such rescheduling, the *customer* misses a recalculated periodic payment, the full amount of that missed payment becomes part of the *customer's payment shortfall*. Such rescheduling may only be done in a way that is consistent with the *FCA's rules*, including those in *MCOB* 13.

Amend the following as shown.

12 Charges

…

12.4 Payment shortfall charges: regulated mortgage contracts

…

12.4.1B R When ~~a *customer* has a *payment shortfall* in respect of a *regulated mortgage contract*, a *firm* must ensure that any payments received from the *customer* are allocated first towards paying off the balance of the *payment shortfall* (excluding any interest or charges on that balance).~~ :

(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.