

# Chapter 12

## Charges

## 12.1 Application

### Who?

**12.1.1** **R** This chapter applies to a *firm* in a category listed in column (1) of the table in **■** MCOB 12.1.2 R in accordance with column (2) of that table.

**12.1.2** **R** This table belongs to **■** MCOB 12.1.1 R

(1) Category of firm	(2) Applicable section
<i>mortgage lender</i>	whole chapter except MCOB 12.1.6 R and MCOB 12.7
<i>mortgage adviser</i> <i>mortgage arranger</i>	MCOB 12.1 (except MCOB 12.1.6 R), MCOB 12.2 and MCOB 12.5.2 R
<i>mortgage administrator</i> a <i>firm</i> that was a <i>mortgage lender</i> or <i>mortgage administrator</i> before the sale of a <i>repossessed</i> property	MCOB 12.1 (except MCOB 12.1.6 R), MCOB 12.2, MCOB 12.4 and MCOB 12.5.2 R
<i>home purchase provider</i> <i>home purchase adviser</i> <i>home purchase arranger</i> <i>home purchase administrator</i> a <i>firm</i> that was a <i>home purchase provider</i> or <i>home purchase administrator</i> before the sale of a <i>repossessed</i> property	MCOB 12.1.1 R to MCOB 12.1.3 R and MCOB 12.7
<i>regulated sale and rent back firm</i>	MCOB 12.1.1 R to MCOB 12.1.3 R, MCOB 12.2.1 G and MCOB 12.5
<i>reversion provider</i>	MCOB 12.1, MCOB 12.2 and MCOB 12.5.1 R to MCOB 12.5.3 G
<i>reversion adviser</i> <i>reversion arranger</i> <i>reversion administrator</i> a <i>firm</i> that was a <i>reversion provider</i> or <i>reversion administrator</i> before the termination of a <i>home reversion plan</i>	MCOB 12.1, MCOB 12.2, MCOB 12.5.2 R and MCOB 12.5.3 G

## What?

- 12.1.3 **R** This chapter applies where a *firm*:
- (1) *enters into*, or makes a further advance on, a *home finance transaction*; or
  - (2) *administers a home finance transaction*; or
  - (3) *arranges or advises on a home finance transaction* or a variation to the terms of a *home finance transaction*.
- 12.1.4 **R** The *payment shortfall* charges and excessive charges requirements in this chapter will continue to apply to a *firm* after a *regulated mortgage contract* has come to an end following the sale of a *repossessed* property. The excessive charges requirements will continue to apply to a *firm* after a *home reversion plan* has ended. References in this chapter to '*customer*' will include references to a former *customer* as appropriate.
- 12.1.5 **G** The *FCA* will expect a *firm* to ensure that charges made to a *customer* arising from the sale of a *repossessed* property and charges arising in relation to a *sale shortfall* are not excessive and are subject to the same considerations as apply with respect to *payment shortfall* charges under this chapter.
- Charges under regulated mortgage contracts which had previously been regulated credit agreements**
- 12.1.5A **R** The *rules* in ■ MCOB 12.4 (Payment shortfall charges: regulated mortgage contracts) and ■ MCOB 12.5 (Excessive charges: regulated mortgage contracts, home reversion plans and regulated sale and rent back agreements) apply to:
- (1) *second charge regulated mortgage contracts* entered into before 21 March 2016, in relation to charges imposed on a customer for events occurring on or after 21 March 2016; and
  - (2) *regulated mortgage contracts* which are *legacy CCA mortgage contracts* secured by a *first charge legal mortgage*, in relation to charges imposed on a customer for events occurring on or after the earliest of:
    - (a) the date on which the *lender* first acts in compliance or purported compliance with *rules* in the *FCA Handbook* which apply to *regulated mortgage contracts* in respect of the contract;
    - (b) the date from which the *lender* notifies the borrower in writing that it will act in compliance with such *rules* in respect of the contract; and
    - (c) 21 March 2017.
- 12.1.6 **R** This chapter does not apply to a *firm* carrying on *reversion activities* or *regulated sale and rent back activities* in respect of a *customer* acting in his capacity as an *unauthorised reversion provider* or as an *unauthorised SRB agreement provider*.

## 12.2 Purpose

### 12.2.1

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- (1) *Principle 6* requires a *firm* to pay due regard to the interests of its *customers* and treat them fairly. A *firm* is also under an obligation, as a consequence of this sourcebook's disclosure requirements, to make charges transparent to *customers*. This chapter reinforces these requirements by preventing a *firm* from imposing unfair and excessive charges.
- (2) The level of charges under a *regulated mortgage contract*, *home reversion plan* or *regulated sale and rent back agreement* is not typically a matter for regulation. However, in certain limited circumstances, the *FCA* believes that *customers* should be protected from unfair and excessive charging practices. This chapter considers four specific circumstances, where:
  - (a) the charges imposed upon a *customer* seeking to terminate a *regulated mortgage contract* before the end of the term of the contract do not reflect the cost of termination to the *firm*;
  - (b) the charges imposed on a *customer* in payment difficulties are not based upon the costs incurred by the *firm*;
  - (c) the charges (including rates of interest) imposed on a *customer* under a *regulated mortgage contract*, *home reversion plan* or *regulated sale and rent back agreement* are excessive and contrary to the *customer's* interests; and
  - (d) the charges made to a *customer* in connection with a *firm* entering into, making a further advance on, administering, arranging or advising on a *regulated mortgage contract*, *home reversion plan* or *regulated sale and rent back agreement*, or arranging or advising on a variation to the terms of a *regulated mortgage contract*, *home reversion plan* or *regulated sale and rent back agreement* are excessive.

## 12.3 Early repayment charges: regulated mortgage contracts

### Early repayment charges to be expressed as cash and to be reasonable

- 12.3.1 **R** A *firm* must ensure that any *regulated mortgage contract* that it enters into does not impose, and cannot be used to impose, an *early repayment charge* other than one that is:
- (1) able to be expressed as a cash value; and
  - (2) a reasonable pre-estimate of the costs as a result of the *customer* repaying the amount due under the *regulated mortgage contract* before the contract has terminated.

- 12.3.2 **G** A *firm* can choose the method it employs for calculating *early repayment charges* in accordance with **■ MCOB 12.3.1 R**. A *firm* should not use the 'Rule of 78', which is not appropriate as it effectively overstates the cost to the *mortgage lender*.

- 12.3.3 **G** A *firm* may calculate the same level of *early repayment charge* for all *regulated mortgage contracts* of a similar type (for example a tranche of *regulated mortgage contracts* offering a particular fixed rate of interest), rather than on the basis of the individual *regulated mortgage contract* with the particular *customer*.

### Early repayment charges to be disclosed in illustrations

- 12.3.4 **R** Before:
- (1) *entering into a regulated mortgage contract* with a *customer*; or
  - (2) making a further advance on an existing *regulated mortgage contract*; or
  - (3) changing all or part of a *regulated mortgage contract* from one interest rate to another; a *firm* must disclose to the *customer*:
    - (a) in the *illustration* provided in accordance with **■ MCOB 5**, **■ MCOB 7.6.7 R**, **■ MCOB 7.6.18 R**, **■ MCOB 7.6.22 R**, **■ MCOB 7.6.31 R**, or **■ MCOB 9**; and
    - (b) in the *illustration* provided as part of the offer document in accordance with **■ MCOB 6.4.1 R(1)** and **■ MCOB 9.5**;

the maximum amount payable as an *early repayment charge* in respect of that *regulated mortgage contract*, if an *early repayment charge* applies.

### Early settlement charges on second charge regulated mortgage contracts

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12.3.5

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The effect of article 29 of the *MCD Order* is that various provisions of, or made under, the *CCA* continue to apply to “consumer credit back book mortgage contracts” (as defined in article 2 of the *MCD Order*). These include the Consumer Credit (Early Settlement) Regulations 2004, which continue to apply to a *second charge regulated mortgage contract* entered into before 21 March 2016 and to a *legacy CCA mortgage contract*.

## 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*.

**12.4.7** **G** 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.

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



**12.5 Excessive charges: regulated mortgage contracts, home reversion plans and regulated sale and rent back agreements**

- 12.5.1** **R** *A firm must ensure that any regulated mortgage contract, home reversion plan or regulated sale and rent back agreement that it enters into does not impose, and cannot be used to impose, excessive charges upon a customer.*
- 12.5.2** **R** *A firm must ensure that its charges to a customer in connection with the firm entering into, making a further advance or further release on, administering, arranging or advising on a regulated mortgage contract, home reversion plan or regulated sale and rent back agreement, or arranging or advising on a variation to the terms of a regulated mortgage contract, home reversion plan or regulated sale and rent back agreement are not excessive.*
- 12.5.3** **G** When determining whether a charge is excessive, a *firm* should consider:

  - (1) the amount of its charges for the services or products in question compared with charges for similar products or services on the market;
  - (2) the degree to which the charges are an abuse of the trust that the *customer* has placed in the *firm*; and
  - (3) the nature and extent of the disclosure of the charges to the *customer*.
- 12.5.4** **G** *Mortgage lenders* are also subject to requirements relating to responsible lending (see ■ MCOB 11).
- 12.5.5** **R** *A second charge lender* may only charge interest on charges applied to a *customer* for breach of a *second charge regulated mortgage contract* if the interest is simple interest.



**12.6 Business loans and loans to high net worth mortgage customers: tailored provisions**

- 12.6.1** G *Firms are reminded that, in relation to a regulated mortgage contract which is solely for a business purpose or is with a high net worth mortgage customer, who is not a consumer under an MCD regulated mortgage contract, in circumstances where ■ MCOB 7.7.1 R applies, if there is a new early repayment charge or a change to the existing early repayment charge, ■ MCOB 7.7.1 R(2) requires a firm to notify the customer within five business days of the maximum amount payable as an early repayment charge.*
- 12.6.2** G *Firms are also reminded that in accordance with ■ MCOB 1.2.3 R, they should comply in full with MCOB, but in doing so may opt to take account of all tailored provisions in MCOB that relate to loans solely for a business purpose or loans to high net worth mortgage customers.*



## 12.7 Home purchase plans

### Who?

12.7.1

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The FCA believes that *Principle 7* requires charges imposed by a *firm* on *customers* to be transparent and that imposing unfair or excessive charges is inconsistent with *Principle 6*.

**Note:** A *firm* should also have regard to its obligations under the *Unfair Terms Regulations* (for contracts entered into before 1 October 2015) or the *CRA* and may find material on the FCA website concerning the FCA consumer protection powers useful.