Chapter 13

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

Who?

13.1.1 R This chapter applies to a firm in a category listed in column (1) of the table in MCOB 13.1.2 R in accordance with column (2) of that table.

13.1.2 R Table: This table belongs to MCOB 13.1.1 R

<table>
<thead>
<tr>
<th>(1) Category of firm</th>
<th>(2) Applicable section</th>
</tr>
</thead>
<tbody>
<tr>
<td>mortgage lender, and a firm that was a mortgage lender before the sale of a repossessed property</td>
<td>MCOB 13.1-MCOB 13.3, except for MCOB 13.3.9 R to MCOB 13.3.11 G</td>
</tr>
<tr>
<td>mortgage administrator, and a firm that was a mortgage administrator before the sale of a repossessed property</td>
<td>whole chapter except for MCOB 13.8</td>
</tr>
<tr>
<td>home purchase provider, and a firm that was a home purchase provider before the sale of a repossessed property</td>
<td>As for a mortgage lender</td>
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<tr>
<td>home purchase administrator, and a firm that was a home purchase administrator before the sale of a repossessed property</td>
<td>As for a mortgage lender, plus: MCOB 13.6 and MCOB 13.8; and MCOB 13.4 and MCOB 13.5 in accordance with MCOB 13.8</td>
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</tbody>
</table>

What?

13.1.3 R This chapter applies with respect to administering a regulated mortgage contract, administering a home purchase plan and administering a sale shortfall.

13.1.4 R The requirements in this chapter will continue to apply to a firm after a regulated mortgage contract or home purchase plan has come to an end following the sale of a repossessed property. References in this chapter to "customer" will include references to a former customer as appropriate.

13.1.5 G The FCA expects a firm to treat a sale shortfall in the same way that it treats a payment shortfall.

13.1.6 G A firm may have entered into a mix of regulated mortgage contracts and non-regulated mortgage contracts with a customer secured on the same property. In such circumstances, if the regulated mortgage contract is in arrears, notwithstanding that the overall position in respect of the
mortgages generally is not in arrears, the firm will need to comply with all the requirements of MCOB 13 in respect to the regulated mortgage contract. Where this involves providing the customer with information, a firm should explain, if it is the case, that whilst the overall position on the mortgages is not in arrears, no action will be taken in respect of the regulated mortgage contract.

13.1.7 If a firm has entered into more than one regulated mortgage contract or home purchase plan with the same customer relating to the same property, the firm may treat them all as one for the purposes of this chapter.
13.2 Purpose

13.2.1 This chapter amplifies Principle 6 in respect of the information and service provided to customers who have payment difficulties or face a sale shortfall.

13.2.2 There may be occasions where a customer enters into a regulated mortgage contract or home purchase plan with no intention of meeting his payment obligations. Where the intention is to defraud, this chapter does not prevent early action to recover sums due.
13.3 Dealing fairly with customers with a payment shortfall: policy and procedures

13.3.1

(1) A firm must deal fairly with any customer who:
   (a) has a payment shortfall on a regulated mortgage contract or home purchase plan;
   (b) has a sale shortfall; or
   (c) is otherwise in breach of a home purchase plan.

(2) A firm must put in place, and operate in accordance with, a written policy (agreed by its respective governing body) and procedures for complying with (1). Such policy and procedures must reflect the requirements of MCOB 13.3.2A R and MCOB 13.3.4A R.

13.3.1A

(1) Where a customer has a payment shortfall in relation to a regulated mortgage contract or home purchase plan, a firm must not attempt to process more than two direct debit requests in any one calendar month.

(2) Where a firm’s direct debit request, in respect of a customer who has a payment shortfall on a regulated mortgage contract or home purchase plan, has been refused, on at least one occasion in each of two consecutive months, due to insufficient funds, the firm must:
   (a) consider whether the method of payment remains suitable for the customer;
   (b) make reasonable efforts to contact the customer to discuss whether the method of payment remains suitable for the customer; and
   (c) not pass on any costs to the customer which were incurred as a consequence of presenting direct debit requests during this period of consideration.

13.3.1B □ MCOB 13.3.1AR (2)(c) does not prevent a firm from attempting to process up to two direct debit requests in any one calendar month provided the firm has made reasonable efforts to contact the customer and the customer has failed to respond.
Vulnerable customers

13.3.1C  A firm must establish and implement clear, effective and appropriate policies and procedures for the fair and appropriate treatment of customers whom the firm understands, or reasonably suspects, to be particularly vulnerable.

13.3.1D  (1) Customers who have mental health difficulties or mental capacity limitations may fall into the category of particularly vulnerable customers.

(2) In developing procedures and policies for dealing with customers who may not have the mental capacity to make financial decisions, a firm may wish to have regard to the principles outlined in the Money Advice Liaison Group (MALG) Guidelines “Good Practice Awareness Guidelines for Consumers with Mental Health Problems and Debt”.

Customers in payment difficulties: procedures

13.3.2  (1) [deleted]

(2) [deleted]

13.3.2A  A firm must, when dealing with any customer in payment difficulties:

(1) make reasonable efforts to reach an agreement with a customer over the method of repaying any payment shortfall or sale shortfall, in the case of the former having regard to the desirability of agreeing with the customer an alternative to taking possession of the property;

(2) liaise, if the customer makes arrangements for this, with a third party source of advice regarding the payment shortfall or sale shortfall;

(3) allow a reasonable time over which the payment shortfall or sale shortfall should be repaid, having particular regard to the need to establish, where feasible, a payment plan which is practical in terms of the circumstances of the customer;

(4) grant, unless it has good reason not to do so, a customer’s request for a change to:

(a) the date on which the payment is due (providing it is within the same payment period); or
(b) the method by which payment is made;

and give the customer a written explanation of its reasons if it refuses the request;

(5) where no reasonable payment arrangement can be made, allow the customer to remain in possession for a reasonable period to effect a sale; and

(6) not repossess the property unless all other reasonable attempts to resolve the position have failed.
The requirement in MCOB 13.3.1 R(2) for a written policy and procedures is intended to ensure that a firm has addressed the need for internal systems to deal fairly with any customer in financial difficulties. MCOB 13.3.1 R(2) does not oblige a firm to provide customers with a copy of the written policy and procedures. Nor, however, does it prevent a firm from providing customers with either these documents or a more customer-orientated version.

In complying with MCOB 13.3.2A R, a firm must give a customer a reasonable period of time to consider any proposals for dealing with the payment difficulties.

In complying with MCOB 13.3.2AR(6):

1. a firm must consider whether, given the individual circumstances of the customer, it is appropriate to do one or more of the following in relation to the regulated mortgage contract or home purchase plan with the agreement of the customer:
   a. extend its term; or
   b. change its type; or
   c. defer payment of interest due on the regulated mortgage contract or of sums due under the home purchase plan (including, in either case, on any sale shortfall); or
   d. treat the payment shortfall as if it was part of the original amount provided (but a firm must not automatically capitalise a payment shortfall where the impact would be material); or
   e. make use of any Government forbearance initiatives in which the firm chooses to participate;

2. a firm must give customers adequate information to understand the implications of any proposed arrangement; one approach may be to provide information on the new terms in line with the annual statement provisions.

In MCOB 13.3.4A R, the impact of a capitalisation would be material if, either on its own or taken together with previous automatic capitalisations, it increased:

1. the interest payable over the term of the regulated mortgage contract by £50 or more; or

2. the contractual monthly repayment amount under the regulated mortgage contract by £1 or more.
A firm must make customers aware of the existence of any applicable Government schemes to assist borrowers in payment difficulties in relation to regulated mortgage contracts.

Firms should note that the list of options to consider set out at MCOB 13.3.4AR(1) is not exhaustive. The FCA would expect firms to be able to justify a decision to offer a particular option.

In the FCA’s view, in order to comply with Principle 6, firms should not agree to capitalise a payment shortfall save where no other option is realistically available to assist the customer.

[deleted]

In relation to adopting a reasonable approach to the time over which the payment shortfall or sale shortfall should be repaid, the FCA takes the view that the determination of a reasonable repayment period will depend upon the individual circumstances. In appropriate cases this will mean that repayments are arranged over the remaining term.

In relation to granting a customer’s request for a change to the payment date, a term that purported to allow a firm to change the payment date unilaterally might in any event contravene the Unfair Terms Regulations (for contracts entered into before 1 October 2015) or the CRA.

Firms that propose to outsource aspects of customer relationships (including collection of debts or any other sums due) should note that and SYSC 8, a firm cannot contract out its regulatory obligations and the FCA will continue to hold them responsible for the way in which this work is carried on.

Record keeping: payment shortfalls and repossessions

(1) A mortgage lender or administrator must make and retain an adequate record of its dealings with a customer whose account has a payment shortfall or a sale shortfall, which will enable the firm to show its compliance with this chapter. That record must include a recording of all telephone conversations between the firm and the customer which discuss any amount in arrears or any amount subject to payment shortfall charges.

(2) A mortgage lender or administrator must retain the record required by (1) for three years from the date of the dealing.

The record referred to in MCOB 13.3.9 R should contain, or provide reference to, matters such as:

(1) the date of first communication with the customer after the account was identified as having a payment shortfall;
(2) in relation to correspondence issued to a customer with a payment shortfall, the name and contact number of the employee dealing with that correspondence, where known;

(3) the basis for issuing tailored information in accordance with MCOB 13.7.1 R in relation to a loan solely for a business purpose;

(4) information relating to any new payment arrangements proposed;

(5) the date of issue of any legal documents;

(6) the arrangements made for sale after the repossession (whether legal or voluntary);

(7) the date of any communication summarising the customer’s outstanding debt after sale of the repossessed property; and

(8) the date and time of each call for the purposes of MCOB 13.3.9R(1).

For details of the standard expected of firms in relation to maintaining records, see MCOB 2.8 (Record keeping)
13.4 Arrears: provision of information to the customer of a regulated mortgage contract

13.4.1 R If a customer falls into arrears on a regulated mortgage contract, a firm must as soon as possible, and in any event within 15 business days of becoming aware of that fact, provide the customer with the following in a durable medium:

(1) the current Money Advice Service information sheet “Problems paying your mortgage”;
(2) a list of the due payments either missed or only paid in part;
(3) the total sum of the payment shortfall;
(4) the charges incurred as a result of the payment shortfall;
(5) the total outstanding debt, excluding charges that may be added on redemption; and
(6) an indication of the nature (and where possible the level) of charges the customer is likely to incur unless the payment shortfall is cleared.

13.4.2 G (1) The Money Advice Service information sheet “Problems paying your mortgage” is available on the website www.moneyadviseservice.org.uk; copies can also be obtained by calling 0300 500 5000.
(2) [deleted]

13.4.3 G (1) A firm may provide the information in MCOB 13.4.1 R (2), (3), (4), (5) and (6) orally, for example by telephone, but must provide the information in a durable medium with a copy of the Money Advice Service information sheet “Problems paying your mortgage” within 15 business days of becoming aware of the customer's account falling into arrears.

(2) Where a firm provides the information in MCOB 13.4.1 R when a payment shortfall occurs but before the customer's account falls into arrears, it need not repeat the provision of the information in MCOB 13.4.1 R when the customer's account falls into arrears.
Customers in arrears within the past 12 months

If a customer's account has previously fallen into arrears within the past 12 months (and at that time the customer received the disclosure required by MCOB 13.4.1 R), the arrears have been cleared and the customer's account falls into arrears on a subsequent occasion a firm must either:

1. issue a further disclosure in compliance with MCOB 13.4.1 R; or
2. provide, as soon as possible, and in any event within 15 business days of becoming aware of the further arrears, a statement, in a durable medium, of the payments due, the actual payment shortfall, any charges incurred and the total outstanding debt excluding any charges that may be added on redemption, together with information as to the consequences, including repossession, if the payment shortfall is not cleared.

Steps required before action for repossession

Before commencing action for repossession, a firm must:

1. provide a written update of the information required by MCOB 13.4.1 R(2), (3), (4), (5) and (6);
2. ensure that the customer is informed of the need to contact the local authority to establish whether the customer is eligible for local authority housing after his property is repossessed; and
3. clearly state the action that will be taken with regard to repossession.
13.4A Data sharing with other charge holders

13.4A.1

(1) If a firm commences legal proceedings against a customer in respect of a regulated mortgage contract or a home purchase plan, it must give notice of the commencement of the legal proceedings to all persons specified in MCOB 13.4A.2 R at the time of their commencement, or as soon as reasonably practicable afterwards.

(2) If a customer voluntarily surrenders possession of their property to a firm, the firm must give all persons specified in MCOB 13.4A.2 R notice of the surrender at the time it happens, or as soon as reasonably practicable afterwards.

(3) If a customer is placed in an assisted voluntary sale process, a firm must give all persons specified in MCOB 13.4A.2 R:

   (a) notice that the customer has entered an assisted voluntary sale process within ten working days from the date the customer entered the assisted voluntary sale process;

   (b) notice of the proposed sale and details of the proposed sale price and method of sale at least ten working days before the date when the property is proposed to be offered for sale; and

   (c) details of the sale price within no more than ten working days from the acceptance of an offer to purchase the property.

Relevant other charge holders

13.4A.2 R

Notices and other details under MCOB 13.4A.1 R are to be given to each person having a legal or equitable mortgage in the relevant property over which the firm has security under a regulated mortgage contract or a home purchase plan.

13.4A.3 G

In complying with MCOB 13.4A.2 R, a firm should make reasonable efforts to discover the existence of other charge holders at the start of the assisted voluntary sale/litigation process.
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.
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.

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.
13.6 Repossessions

13.6.1 A firm must ensure that, whenever a property is repossessed (whether voluntarily or through legal action) and it administers the regulated mortgage contract or home purchase plan in respect of that property, steps are taken to:

(1) market the property for sale as soon as possible; and

(2) obtain the best price that might reasonably be paid, taking account of factors such as market conditions as well as the continuing increase in the amount owed by the customer.

In MCOB 13.6.1 R it is recognised that a balance has to be struck between the need to sell the property as soon as possible, to reduce or remove the outstanding debt, and other factors which may prompt the delay of the sale. These might include market conditions (explicitly referred to in MCOB 13.6.1 R(2)) but there may be other legitimate reasons for deferring action. This could include the expiry of a period when a grant is repayable on re-sale, or the discovery of a title defect that needs to be remedied if the optimal selling price is to be achieved.

If the proceeds of sale are less than the amount due

13.6.3 A firm must ensure that, as soon as possible after the sale of a repossessed property, if the proceeds of sale are less than the amount due under the regulated mortgage contract or home purchase plan, the customer is informed in a durable medium of:

(1) the sale shortfall; and

(2) where relevant, the fact that the sale shortfall may be pursued by another company (for example, a mortgage indemnity insurer).

13.6.4 (1) If the decision is made to recover the sale shortfall, the firm must ensure that the customer is notified of this intention.

(2) The notification referred to in (1) must take place within five years of the date of the sale (if the regulated mortgage contract or home purchase plan is subject to Scottish law) or within six years (in all other cases).
A firm is not required to recover a sale shortfall. A firm may not wish to recover the sale shortfall in some situations, for example where the sums involved make action for recovery unviable.

If the proceeds of sale are more than the amount due

A firm must ensure that, on the sale of a repossessed property, if the proceeds of sale are more than the amount due under the regulated mortgage contract or home purchase plan, reasonable steps are taken, as soon as possible after the sale, to inform the customer in a durable medium of the surplus and, subject to the rights of any subsequent mortgage or charge holders, to pay it to him.
13.7 Business loans and loans to high net worth mortgage customers: tailored provisions

13.7.1 Where the regulated mortgage contract is for a business purpose or is with a high net worth mortgage customer, a firm may as an alternative to 
■ MCOB 13.4.1 R(1) provide the following information in a durable medium instead of the Money Advice Service information sheet “Problems paying your mortgage”:

(1) details of the consequences if the payment shortfall is not cleared;

(2) a description of the options available to the customer for clearing the payment shortfall; and

(3) (in the case only of loans for a business purpose) details of sources of fee-free advice for business customers.

13.7.2 Firms are reminded that in accordance with MCOB 1.2.3R, 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. Therefore, a firm may only follow the relevant tailored provisions in ■ MCOB 13.7, if it also follows all other relevant tailored provisions in MCOB. In either case, the rest of MCOB applies in full.
13.8 Dealing fairly with customers in arrears: policy and procedures

Note: The rules on establishing and applying a policy and procedures for dealing fairly with customers in arrears apply (see MCOB 13.3).

Arrears: provision of information to the customer

13.8.1 If a customer falls into arrears, a firm must provide the customer with adequate information about the arrears in a durable medium:

(1) as soon as practicable after becoming aware of that fact;

(2) at quarterly intervals; and

(3) before commencing action for repossession.

13.8.2 A firm may want to refer to the provisions on the information to be provided to a mortgage customer in relation to arrears for guidance (see MCOB 13.4 and MCOB 13.5).

Repossessions

Note: The rules regarding repossession apply (see MCOB 13.6).