

Chapter 13

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

13.3 Dealing fairly with customers with a payment shortfall: policy and procedures

- 13.3.1** **R** (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** **R** (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** **G** ■ 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 **R** 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 **G**

- (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 **E**

- (1) [deleted]
- (2) [deleted]

13.3.2A **R** 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.

- 13.3.3** **G** 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.
- 13.3.3A** **R** 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.
- 13.3.4** **G** (1) [deleted]
(2) [deleted]
- 13.3.4A** **R** 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*.
- 13.3.4AA** **R** 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.

- 13.3.4B **R** 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*.
- 13.3.4C **G** 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.
- 13.3.4D **G** 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*.
- 13.3.5 **G** [deleted]
- 13.3.6 **G** 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.
- 13.3.7 **G** 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.
- 13.3.8 **G** 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

- 13.3.9 **R** (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.
- 13.3.10 **G** 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).

13.3.11 G For details of the standard expected of *firms* in relation to maintaining records, see ■ MCOB 2.8 (Record keeping)