

Chapter 13

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

13.6 Repossessions

- 13.6.1** **R** 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*.

- 13.6.2** **G** 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** **R** 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** **R**
- (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).

13.6.5 **G** 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.....

13.6.6 **R** 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.