

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****

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

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

- G** 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 **G** 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 **G** 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** **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)

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.moneyadvice.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

13.4.4

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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

13.4.5

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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 **R**

- (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.

13.5.5

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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.

13.5.6

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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 **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.



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

- 13.7.1** **R** 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** **G** *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 Home purchase plans

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 **R** 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 **G** 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 repossessions apply (see ■ MCOB 13.6).