

MORTGAGE ARREARS INSTRUMENT 2010

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 149 (Evidential provisions);
 - (3) section 156 (General supplementary powers); and
 - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 25 June 2010.

Amendments to the Handbook

- D. The Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Mortgage Arrears Instrument 2010.

By order of the Board
24 June 2010

Annex

**Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook
(MCOB)**

In this Annex, underlining indicates new text and striking through indicates deleted text.

MCOB 12.4.1R, which has not changed, has been included to aid the reader.

4.7.4 R For the purposes of *MCOB* 4.7.2R:

...

- (3) if a *firm* is dealing with an existing *customer* in *arrears* and has concluded that there is no suitable *regulated mortgage contract* for the purposes of *MCOB* 4.7.2R, the *firm* must nonetheless have regard to ~~*MCOB* 13.3.2E(1)(a), (e) and (f)~~ 13.3.2AR(1), (5) and (6) (see also ~~*MCOB* 13.3.4G(1)(a) and (b)~~ 13.3.4AR(1)(a) and (b)).

12.4 Arrears 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 for *arrears* on a *customer* except where that charge is a reasonable estimate of the cost of the additional administration required as a result of the *customer* being in *arrears*.

- (2) Paragraph (1) does not prevent a *firm* from *entering into a regulated mortgage contract* with a *customer* under which the *firm* may change the rate of interest charged to the *customer* from a fixed or discounted rate of interest to the *firm's* standard variable rate if the *customer* goes into *arrears*, providing that this standard variable rate is not a rate created especially for *customers* in *arrears*.

12.4.1A E The imposition of a charge for *arrears* 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 a *customer* has a payment shortfall in respect of a *regulated mortgage contract*, a *firm* must ensure that any payments received from the *customer* are allocated first towards paying off the balance of the shortfall (excluding any interest or charges on that balance).

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13.3 Dealing fairly with customers in arrears: policy and procedures

13.3.1 R ...

- (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 13.3.2AR and MCOB 13.3.4AR.

~~Policy and procedures: content~~

13.3.2 E (1) ~~A *firm* should ensure that its written policy and procedures include:~~

- ~~(a) using 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;~~
 - ~~(b) liaising, if the *customer* makes arrangements for this, with a third party source of advice regarding the payment shortfall or *sale shortfall*;~~
 - ~~(c) adopting a reasonable approach to the 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*;~~
 - ~~(d) granting, unless it has good reason not to do so, a *customer's* request for a change to:

 - ~~(i) the date on which the payment is due (providing it is within the same payment period); or~~
 - ~~(ii) the method by which payment is made;~~~~and giving the *customer* a written explanation of its reasons if it refuses the request;~~~~
 - ~~(e) giving consideration, where no reasonable payment arrangement can be made, to the *customer* being allowed to remain in possession to effect a sale; and~~
 - ~~(f) *repossessing* the property only where all other reasonable attempts to resolve the position have failed. [deleted]~~
- (2) ~~Contravention of (1) may be relied on as tending to show contravention of MCOB 13.3.1R(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.

...

13.3.3A R In complying with MCOB 13.3.2AR, 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 ~~In relation to using reasonable efforts to reach an agreement with a customer over the method of repaying any payment shortfall or sale shortfall, customers:~~

- ~~(1) should be given a reasonable period of time to consider any proposals for payment that are put to them; in addition, and depending on the individual circumstances, a firm may wish 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; [deleted]~~
- (2) ~~should be given 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*. [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); 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*.

13.3.4B 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 FSA would expect firms to be able to justify a decision to offer a particular option.

13.3.4D G In the FSA'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 ~~In relation to using reasonable efforts to reach an agreement with a *customer* over the method of repaying any payment shortfall or *sale shortfall*, a *mortgage lender* should not automatically capitalise *arrears*. [deleted]~~

...

Record keeping: arrears 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 is in *arrears* or who has 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 the sums due.

- (2) A *mortgage lender* or *administrator* must retain the record required by (1) for ~~a year~~ three years from the date ~~on which the relevant payment shortfall or *sale shortfall* was cleared~~ of the dealing.

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

- (1) the date of first communication with the *customer* after the account was identified as being in *arrears*;
- (2) in relation to correspondence issued to a *customer* in *arrears*, 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* 13.7.1R;
- (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); and
- (7) the date of any communication summarising the *customer's* outstanding debt after sale of the *repossessed* property;
- (8) the date and time of each call for the purposes of *MCOB* 13.3.9R(1).

...

Transitional Provisions

TP 1.1 Transitional Provisions

| (1) | (2) Material to which the transitional provision applies | (3) | (4) Transitional provision | (5) Transitional provision: dates in force | (6) Handbook provision: coming into force |
|-----|--|----------|---|--|---|
| ... | | | | | |
| 13 | <u>MCOB 13.3.9R</u> | <u>R</u> | <u>A firm which complies with MCOB 13.3.9R as it applied on 24 June 2010 need not comply with MCOB 13.3.9R as it applies from 25 June 2010.</u> | <u>25 June 2010 to 25 December 2010</u> | <u>25 June 2010</u> |

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Schedule 1 Record keeping requirements

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Sch 1.3 G

| Handbook reference | Subject of record | Contents of record | When record must be made | Retention period |
|---------------------|--|--|---|--|
| ... | | | | |
| <u>MCOB 13.3.9R</u> | Dealings with <i>customers in arrears</i> or with a <i>mortgage shortfall debt</i> | Details of all communication <u>dealings (including a recording of all telephone conversations)</u> with the <i>customer</i> ; information relating to any repayment plan; date of issue of any legal proceedings; arrangements made for sale of a <i>repossessed</i> property; and the basis of any tailored information where the loan is for a business purpose. | The date on which the customer's account first falls into arrears <u>The date of the dealing</u> | One year <u>Three years</u> from the date on which the record is made relevant payment shortfall or mortgage shortfall debt is cleared |