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May 2025 update:
This letter is historical. See our supervisory correspondence page for more information and current views.

20 November 2013

Dear CEO,

Standard Variable Rates (SVRs)

A number of mortgage lenders have engaged with us recently about changing their mortgage contracts, including SVRs. We are writing to clarify our position on how you should engage with us if you want to change your SVR and remind you of the relevant regulations and rules that apply.

We recognise that mortgage lenders may want to vary their SVRs or other terms in their contracts, but we are concerned that the factors driving changes to SVRs may not always be transparent to consumers. In some cases the desired changes may also be:

- unfair under the Unfair Terms in Consumer Contracts Regulations 1999, and
- incompatible with FCA Principles for Businesses and other rules

Engaging with the FCA

Unless lenders have reason to believe that they should notify us of a change to their SVR, to comply with their obligations under Principle 11 for example, we do not routinely require pre-notification of changes to SVRs, nor justification for the change. Lenders should, however, be able to demonstrate how they have complied with the relevant regulations and rules.

Relevant regulations and rules

When making changes to mortgage contracts, firms should observe the Unfair Terms in Consumer Contracts Regulations 1999 (the Regulations) and comply with our Principles for Businesses and our Mortgages and Home Finance: Conduct of Business sourcebook (MCOB). Firms may find it helpful to have regard to relevant guidance, which we have published in these areas. Principle 7 will be particularly relevant when considering how to communicate changes to mortgage contracts to consumers.

Please see the annex for further information on the regulations and our rules.

Fairness in mortgage contracts

We intend to publish a Discussion Paper about fairness in the context of changes to mortgage contracts in 2014. The paper will consider the factors that are likely to be relevant when assessing the fairness of firms' conduct when they make changes to their mortgage contracts.

If you have any questions regarding the information in this letter, please liaise with your usual supervisory contact.

Yours faithfully,

Annex

The Regulations

You should have regard to the Regulations when drafting or changing the terms of your mortgage contracts, in particular when considering whether they are fair to consumers and whether they are drafted in plain and intelligible language. This includes terms that give you the right to change your SVR.

Regulation 5 of the Regulations states that '*a contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer*'.

Regulation 7 states that '*a seller or supplier shall ensure that any written term of a contract is expressed in plain, intelligible language*'.

Schedule 2 of the Regulations might also help you consider the fairness of the terms in your mortgage contracts. Our views on terms we consider may be unfair under the Regulations were published in January 2012.[1]

If you have an unfair term in your mortgage contract, it will not be binding on the consumer. If you have a term in your mortgage contract that is not written in plain and intelligible language, the interpretation that is most favourable to the consumer shall prevail.

Ultimately, only a court can determine whether a contract term is unfair or not expressed in plain and intelligible language under the Regulations.

Our rules

Principle 6 of our Principles for Businesses requires firms to pay due regard to the interests of their customers and treat them fairly. Principle 7 requires firms to pay due regard to the information needs of their clients and communicate information to them in a way which is clear, fair and not misleading. MCOB 2.2.6R separately requires firms to take reasonable steps to communicate information to customers in a way that is clear, fair and not misleading.

To give an example of the application of our rules in this area, we expect firms to be able to demonstrate to us how they have complied with Principle 6 in their treatment of 'trapped' customers. Our new evidential provision in MCOB 11.8.1E protects borrowers who find themselves 'trapped' with their current lender[2] because they are unable to enter into a new mortgage (whether with their current lender or another lender) or vary the terms of their existing mortgage. Lenders should not treat those customers less favourably than other customers with similar characteristics through practices such as offering less favourable interest rates or other terms to take advantage of the fact that they are unable to exit the mortgage.

[1] http://www.fca.org.uk/static/pubs/guidance/fg12_02.pdf
[2] http://www.fsa.gov.uk/static/pubs/policy/ps12-16.pdf