

Regulator Assessment: Qualifying Regulatory Provisions

Title of proposal: Minor Handbook changes related to home finance customers with a payment shortfall.

Lead regulator: FCA

Date of assessment: November 2011

Commencement date: 24 February 2016

Origin: Domestic

Does this include implementation of a Cutting Red Tape review? No

Which areas of the UK will be affected? All firms delivering financial advice in the UK.

Brief outline of proposed new or amended regulatory activity

The FCA's Mortgage and Home Finance: Conduct of Business (MCOB) rules set out the requirements for firms when dealing with customers who are experiencing a payment shortfall.

The rules in MCOB chapter 12 are designed to ensure that firms do not impose unfair or excessive charges. In particular, MCOB 12.4.1BR sets out how we expect firms to allocate payments received from customers who are suffering a payment shortfall. The rule aims to ensure that payments are allocated in a way that minimises the time taken to pay off the arrears and thus reduces the amount paid in related fees and charges. If fees are paid before arrears are cleared, then the consumer may pay additional fees on the outstanding remaining arrears. In the extreme, consumers may only pay fees without reducing their arrears.

We recently reviewed a number of firms' allocation of payments processes. We identified divergent practices among firms when allocating payments received from customers who are suffering a payment shortfall. The proposal clarified that, when a customer is suffering a payment shortfall, the firm must ensure that no part of any payment received from the customer is allocated towards paying un-capitalised interest or charges incurred because of a payment shortfall before the balance of the payment shortfall has been cleared. This was the position under the original rule but the proposal clarifies this.

MCOB 12.4.1BR does not specify whether the current month's contractual monthly instalment (CMI) should be paid before or after the payment shortfall balance. Where interest and charges have previously been capitalised, these now form part of the capital balance. As a result, we amended MCOB 12.4.1BR and the Glossary definition of 'payment shortfall' to clarify our expectations.

In June 2016 Mortgage Policy published Consultation Paper 16/16 consulting on proposed changes to the wording of:

- MCOB 12.4.1BR – to clarify that when a customer has a payment shortfall, the firm must ensure that any payments received from a customer are allocated in a way that minimises the amount of the payment shortfall; and
- The FCA’s Handbook Glossary definition of payment shortfall - to clarify that interest (on missed payments), outstanding fees and charges and ancillary items (such as unpaid service charge settled on behalf of a customer) do not form part of a payment shortfall.

Which type of business will be affected? How many are estimated to be affected?

Any firm currently administering regulated mortgage contracts (RMCs) or Home Purchase Plans (HPPs) may be affected. There are currently 623 firms authorised to administer RMCs and/or HPPs.

Price base year	Implementation date	Duration of policy (years)	Business Net Present Value	Net cost to business (EANDCB)	BIT score
2016	24 February 2016	10	0	0	0

Please set out the impact to business clearly with a breakdown of costs and benefits

The amendments do not introduce any new regulatory requirements but clarify existing ones.

MCOB 12.4.1BR

We consider that MCOB 12.4.1BR always required firms to ensure that any payment shortfall balance was cleared before shortfall-related (non-capitalised) interest and charges. The purpose of the amendments to this rule and the addition of related guidance is to clarify this. As a consequence we believe that the proposed amendments should not result in an increase in costs for firms that are in compliance with the rule as originally drafted.

Glossary definition of payment shortfall

The proposed amendment to the Glossary definition of payment shortfall should reinforce the widespread understanding that for the purpose of the FCA rules, only missed periodic repayments of capital or interest (or both) constitute a payment shortfall. The amendment does not, in itself, require a firm to incur costs.

In developing this proposal we collected cost information from firms, via a survey, and reported this in the consultation paper (see CP 16/16). We received 31 survey responses, 25 of which included information on costs. Respondents indicated that the change to the definition would result in no costs, or that any costs would be of minimal significance. In CP16/16, we set out our view that firms compliant with existing rules would not incur new costs resulting from the proposed change to the definition of payment shortfall.

Please provide any additional information (if required) that may assist the RPC to validate the BIT Score.

Link to CP16/16

<https://www.fca.org.uk/publications/consultation-papers/cp16-16-minor-handbook-changes-related-mortgage-borrowers-payment>

Link to PS 16/25

<https://www.fca.org.uk/publication/policy/ps16-25.pdf>