

## **Consultation Paper** **CP23/13\*\***

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# Strengthening Protections for Borrowers in Financial Difficulty: Consumer Credit and Mortgages

**May 2023**

## How to respond

We are asking for comments on this Consultation Paper (CP) by **13 July 2023**.

You can send them to us using the form on our [website](#).

Or in writing to:

Mortgage Policy Team  
Financial Conduct Authority  
12 Endeavour Square London  
E20 1JN

**Email:**

[cp23-13@fca.org.uk](mailto:cp23-13@fca.org.uk)



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## Chapter 1

# Summary

### Why we are consulting

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- 1.1** UK households' financial resilience is weakening. As consumers across the country are affected by the rising cost of living, it is important that lenders support their customers, including those in financial difficulty.
- 1.2** During the coronavirus pandemic we introduced our Tailored Support Guidance (TSG) to make clear how firms could support customers in financial difficulty. These were last updated in 2021 for Consumer Credit and Mortgages.
- 1.3** This consultation sets out how we plan to incorporate aspects of the TSG into our Consumer Credit (CONC) and Mortgages and Home Finance: Conduct of Business (MCOB) sourcebooks and withdraw the TSG. We also propose targeted additional changes to support consumers in financial difficulty.
- 1.4** We do not propose to transfer parts of the TSG which are not relevant outside the context of the pandemic. These were specific to the situation at the time or related to the transition from payment deferrals which firms were expected to offer. These will not remain after the TSG is withdrawn.

### Who this applies to

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- 1.5** This consultation will impact:
- Consumer credit lenders (including MCD article 3(1)(b) creditors)
  - Premium finance firms
  - Mortgage lenders and administrators
  - Home purchase providers and administrators
  - Firms who carry on activities in relation to consumer hiring, operating an electronic system in relation to lending (in relation to a borrower under a P2P agreement) or debt collecting
  - Consumer credit and mortgage lenders in the supervised run-off mechanism of the financial services contracts regime. (These proposals would come into force (see paragraph 1.14) after the broader temporary permissions regime ends.)
  - Gibraltar-based consumer credit and mortgage lenders passporting into the UK
- 1.6** This consultation will also be relevant to:
- Debt advice bodies
  - Industry groups and trade bodies
  - Consumer organisations

## What we want to change

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- 1.7** We want to provide a stronger framework for firms to better support customers facing payment difficulties by incorporating relevant aspects of the TSG into the Handbook. These changes reinforce our expectation that firms put customers' needs first, aligning with our Strategy, and support firms acting to deliver good outcomes for customers, as will be required under our Consumer Duty.
- 1.8** Chapter 3 outlines further details on all the aspects of the TSG which we propose to incorporate into the Handbook. Key proposals include:
- broadening the scope of relevant consumer credit and mortgage chapters to make clear to firms that appropriate support should be provided to customers in or at risk of payment difficulty
  - enhancing our expectations around customer engagement and providing information including on money guidance and debt advice
  - expecting firms to consider a range of forbearance options and take reasonable steps to ensure arrangements remain appropriate
  - for consumer credit, expecting firms to take into account the customer's individual circumstances when providing forbearance (which is already expected for mortgage firms)
- 1.9** We also propose targeted additional changes, separate to the TSG, to support consumers in financial difficulty. For consumer credit firms, we propose an additional change beyond the TSG to:
- introduce guidance to help firms determine their necessary and reasonable costs in setting fees and charges
- 1.10** For mortgages, we propose to:
- change our guidance to allow firms more scope to capitalise payment shortfalls where appropriate
  - improve disclosure for all customers in payment shortfall
  - make clearer our existing requirement to record telephone calls with customers in payment shortfall, including video conferencing
- 1.11** Many of the proposed changes to MCOB affect rules that apply in respect of regulated home purchase plans as well as regulated mortgage contracts. This consultation paper chiefly focuses on the changes in the context of regulated mortgage contracts, but we invite comments from home purchase plan firms where the proposals would also apply to these products. We refer to a consequential change affecting home purchase plans specifically at 3.94.

## Measuring success

- 1.12** We intend to engage with a range of stakeholders about the impact of our intervention. As part of our ongoing supervision of firms we will continue to monitor market and firm

data and intelligence, including measures of customers in financial difficulty, as well as complaints about firms and information we receive from the Ombudsman regarding the treatment of customers in financial difficulty.

## Next steps

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- 1.13** We welcome feedback on our proposals, including the draft Handbook text in Appendix 1. Please send us your comments by 13 July 2023.
- 1.14** We will consider the feedback and aim to publish a final Policy Statement, including our response to feedback, in H2 2023. We expect the rules to come into force in H1 2024 and propose to withdraw the TSG at the same time.

## Chapter 2

# The wider context

## The harm we are trying to reduce

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- 2.1** The coronavirus pandemic had a significant impact on consumers. We acted quickly to give clarity to firms about the support we expected them to provide to customers who were struggling financially. In 2020, we finalised our TSG covering Mortgages, Consumer Credit and Overdrafts, which was put in place to help firms continue delivering support to customers affected by the pandemic. The TSG aimed to ensure firms considered what support might be appropriate for these customers, taking account of their individual circumstances. It was largely built on our Principles for Businesses, existing Handbook provisions, and aspects of published non-Handbook guidance.
- 2.2** In Spring 2021, we launched the Borrowers in Financial Difficulty (BiFD) project to assess whether firms were meeting the expectations set out in the TSG. This found examples of firms delivering good outcomes but also that many firms were falling short of our expectations resulting in harm to customers. Some of the harms identified arise from firms:
- not providing forbearance to customers at risk of payment difficulties before they miss a payment
  - not effectively engaging with customers including about money guidance and debt advice
  - not tailoring forbearance options to individual circumstances
- 2.3** Some of the proposals in this consultation aim to address these practices.
- 2.4** Our 2022 Financial Lives Survey found that the number of UK adults with low financial resilience increased from 10.7 million in 2020 to 12.9 million in 2022. As consumers across the country are affected by the rising cost of living, it is important that lenders support their customers, including those in financial difficulty. In June 2022 we sent a Dear CEO letter to more than 3,500 retail lending firms setting out our expectations that firms support their customers, including those in financial difficulty. We said that we considered the TSG to be relevant for all consumers in financial difficulty, including those in difficulty due to the rising cost of living. We also committed to consulting on the future of the TSG.
- 2.5** Firms should offer appropriate support to all customers experiencing financial difficulty. Our proposals build on and enhance our expectations of firms to deliver good outcomes for customers in financial difficulty. We recognise that many firms are already delivering against our expectations in the TSG and by incorporating these within the Handbook we aim to regularise such practices across the industry.

## How it links to our objectives

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### Consumer protection

- 2.6** Our proposals aim to advance our consumer protection objective by seeking to reduce and prevent harm to consumers who are in or at risk of payment difficulties beyond the pandemic by ensuring they are provided with appropriate support.
- 2.7** We have also considered the needs of different consumer groups and, in particular, vulnerable consumers who may be at greater risk of harm where a firm fails to provide appropriate support. Our proposals aim to address this risk by requiring firms to consider the risk of harm and take appropriate action to mitigate it.

### Equality and diversity considerations

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- 2.8** We have considered the equality and diversity issues that may arise from our proposals. The proposals aim to improve outcomes for all consumers who experience payment difficulties.
- 2.9** We do not consider that our proposals negatively impact any of the groups with protected characteristics under the Equality Act 2010. The proposals may have a positive impact for persons with the protected characteristic of disability. This is due to a potentially greater likelihood of these consumers experiencing payment difficulties.
- 2.10** We will continue to consider the equality and diversity implications of the proposals during the consultation period and will revisit them following any relevant feedback.

## Chapter 3

# Our proposals

- 3.1** To reinforce our expectations of firms we propose to introduce changes to our Consumer Credit (CONC) and Mortgages and Home Finance: Conduct of Business (MCOB) sourcebooks.

## Supporting customers at risk of payment difficulty

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- 3.2** Our current rules in CONC 7 and MCOB 13 primarily apply to customers who have already missed a payment. The TSG set out that firms should also support customers before they miss a payment if they indicate that they are experiencing, or reasonably expect to experience, payment difficulties.
- 3.3** It is important that customers facing payment difficulties are encouraged to engage early with their lender. It is also essential that they get the support they need to help manage any payment difficulty and, where possible, to help them avoid or reduce any arrears or payment shortfall that may arise. We therefore propose to expand the scope of the relevant chapters to make clear that they also apply to those who indicate to a firm that they are at risk of missing a payment, as well as any instances where this is identified by firms.

## Credit

- 3.4** We propose to extend relevant CONC rules and guidance to require that firms should provide appropriate support to customers approaching arrears where the customer indicates to the firm that they are at risk of not meeting one or more repayments when they fall due. These proposals build on our existing requirements for firms to monitor a customer's repayment record and take appropriate action where there are signs of actual or possible repayment difficulties (CONC 6.7.2R and CONC 6.7.3AR) and should help to ensure that customers are provided with appropriate support at an earlier stage.
- 3.5** For overdraft customers we propose to amend CONC 5D to reflect the expectations set out in our Overdrafts Finalised Guidance that firms should identify customers who are showing a pattern of repeat use as early as possible, taking account of any relevant information held by the firm including information provided by the customer and information from the customer's personal current account in respect of which the overdraft is provided.

## Mortgages

- 3.6** We propose to expand the scope of MCOB 13.3.1R to make clear that firms must deal fairly with any customer who has or may have payment difficulties. For the purposes of MCOB 13 this would include three situations:
- The customer has a payment shortfall

- The customer indicates to the firm that they are at risk of falling into payment shortfall
- The firm otherwise becomes aware that the customer may be at risk of falling into payment shortfall

**3.7** We propose that a firm should offer support to a customer where they become aware that the customer is, or may be, at risk of missing mortgage payments, even where the customer has not told them this. A firm may become aware, for example, if they are told by a third party, such as a debt adviser, or if a customer has multiple products with the same firm and misses payments on these. Firms have discretion in how they engage with customers to communicate that support is available if needed, recognising that what will be appropriate will depend on the circumstances of the case, including the means by which the firm became aware. However, to be clear, while we propose that firms must react to information indicating a customer is, or may be, at risk of payment shortfall, we do not propose to require firms to take steps to proactively identify such customers, as not all firms will have access to information which may indicate this.

**3.8** In expanding the scope of MCOB 13, firms will need to consider support for a wider population of customers. This will include some who, following further consideration of their circumstances, can afford to continue making their payments. We are mindful of the risk of poor outcomes if customers agree to forbearance they do not need. This highlights the importance of firms considering the appropriateness of options given the customer's individual circumstances and customers understanding the implications of any support provided.

**3.9** Aligned with the TSG we are also, at paragraph 3.35, proposing to build on the existing requirement that firms give customers adequate information to understand the implications of any proposed arrangement, which will help customers consider whether such options are right for them.

**Q1: Do you agree with our proposed changes to the scope of:**

- a. CONC 5 & 7?
- b. MCOB 13?

## Reviewing the effectiveness of policies and procedures

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**3.10** The TSG highlighted the importance of having policies and procedures that are fit for purpose and that can respond to changes in the external environment. Our supervisory work highlights the equal importance of responding to findings from internal reviews, such as findings from front-line quality assurance. We are therefore consulting on adding a new rule to both CONC 7 and MCOB 13 to require firms to ensure the effectiveness of any policies and procedures put in place for customers in or at risk of payment difficulty, and the firm's ongoing compliance with them, is reviewed at appropriate intervals.

**3.11** We considered requirements for this to be reviewed 'regularly' but were concerned that this could lead to an approach which is overly process-focused rather than one which

is outcomes-focused. Instead, we propose that firms must review the effectiveness of their policies and procedures at appropriate intervals. This provides flexibility for firms to review when it is appropriate to do so, including to respond in a timely way to external or internal factors such as external shocks and changes in the economic environment, as well as findings from internal reviews including quality assurance and customer outcomes testing.

- 3.12** We propose to consult on supporting guidance that firms should ensure these reviews consider the customer's overall experience, rather than only considering individual interactions in isolation. This will mean firms better assess whether they are providing customers in payment difficulty with appropriate support, and treating them fairly, while their difficulties remain.

**Q2: Do you agree with our proposals to include a new Handbook rule and associated Handbook guidance, covering the reviews of the effectiveness of policies and procedures:**

- a. in CONC 7?
- b. in MCOB 13?

## Customers in vulnerable circumstances

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- 3.13** Many customers in financial difficulty will display characteristics of vulnerability. The TSG emphasised the need for firms to ensure they respond to the needs of customers with vulnerable characteristics who may be at the greatest risk of harm. It noted the importance of adapting communication methods to consider customer needs and preferences, as well as the need to tailor forbearance to take account of their individual circumstances.
- 3.14** Our Financial Lives Survey found the number of consumers with characteristics of vulnerability had increased by nearly a million in May 2022 compared with two years earlier, particularly due to an increase in UK adults with low financial resilience.
- 3.15** Since publishing the TSG we have published our Guidance for firms on the fair treatment of vulnerable customers (FG21/1). This Guidance highlights the actions firms should take to understand the needs of vulnerable customers to make sure they are treated fairly.
- 3.16** We propose to replace the narrowly drawn expectations on vulnerability in CONC 7 and MCOB 13 with new guidance. We propose that this reminds firms that they should have regard to the expectations set out in FG21/1 on the fair treatment of vulnerable customers, including when developing policies and procedures for customers who have, or may have, payment difficulties. Firms will need to use their judgement to consider what each section of the Vulnerable Customer Guidance means for them and what they should do to make sure they treat customers fairly.

**Q3: Do you have any comments on our updated references to the fair treatment of vulnerable customers:**

- a. for CONC 7?
- b. for MCOB 13?

## Forbearance options

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**3.17** It is important that firms are flexible when dealing with customers who have or may have payment difficulties. We expect firms to consider a range of forbearance options and take account of customers' individual circumstances when determining and providing the appropriate support.

### Credit

**3.18** We propose adding examples of forbearance and due consideration that may be appropriate to the individual circumstances of the customer to the existing examples set out in CONC 7.3.5G so that they include:

- suspending, reducing, waiving or cancelling any further interest and charges
- allowing deferment of payment of arrears
- accepting no payments, reduced payments or token payments for a reasonable period of time
- agreeing a sustainable repayment arrangement with the customer that allows the customer a reasonable period of time to repay the debt
- transferring the debt to an alternative credit agreement (refinancing) to help the customer reduce the debt over a reasonable period of time in such a way that does not adversely affect the customer's financial situation
- for articles in pawn under a regulated credit agreement, considering extending redemption periods and delaying intention to sell where appropriate

**3.19** We also propose clarifying that these examples are not exhaustive.

### Overdrafts

**3.20** Forbearance options and other support appropriate to the individual circumstances of the customer proposed to be included in CONC include:

- reducing or waiving interest
- transferring the overdraft debt to an alternative credit product on more favourable terms (refinancing)
- agreeing staged reductions in the overdraft limit and balance (agreeing a repayment plan)

## Mortgages

- 3.21** MCOB 13.3.4AR(1) sets out a range of options that firms must consider to support customers in payment difficulty, and MCOB 13.3.4CG reminds firms that this list is not exhaustive. In the TSG, we said that firms should consider and use a range of forbearance options and not take a 'one size fits all' approach because different solutions are likely to be appropriate for different customer circumstances.
- 3.22** We propose adding to the list of options that a firm must consider, given the individual circumstances of the customer, under MCOB 13.3.4AR. Firms will need to consider whether it is appropriate to waive or defer payment of capital and/or interest, and/or whether it is appropriate to reduce the interest rate or apply simple interest.
- 3.23** We do not propose to make this expanded list exhaustive and continue to expect firms to consider other options which may be appropriate in specific circumstances.
- 3.24** We also propose to add new guidance confirming our expectation that a firm employs a sufficient range of options to help customers facing financial difficulties.

**Q4: Do you agree with our proposals to add to the existing list of forbearance options at:**

- a. CONC 7.3.5G & CONC 5D 3.3(4)G?
- b. MCOB 13.3.4AR?

## Transparency and accessibility of forbearance options

- 3.25** In the TSG, we set out how we expected firms to engage with customers and how they should be transparent about the range of options they can consider. This notes that some customers can become disengaged where they are required to complete detailed forms with little help or may not have the capability and understanding to assess their needs without support. Some customers, including those with characteristics of vulnerability, may find it more difficult to interact offline and may prefer to complete as many steps as possible online. Others may not have access to online channels or find digital interactions difficult.
- 3.26** We propose to add guidance to MCOB 13 and CONC 5 & 7 that firms should:
- offer to engage with customers through a range of channels, changing the channel if necessary to enable the customer to engage with the firm effectively; and
  - be transparent with customers about the range of options the firm will consider and the communication channels available:
    - For mortgages, we propose the range of options to help customers that a firm will consider should be set out clearly, including in a prominent location on the firm's website
    - For overdrafts, we propose that firms should set out on their websites in a prominent location the range of options that can be considered when an overdraft borrower is facing financial difficulties to enable customers and

those advising them to understand and evaluate the options. Where the firm offers refinance loans, firms should provide indications of the eligibility criteria, interest rate and term. This proposal is in line with our [Overdrafts Finalised Guidance](#) (September 2020).

**Q5: Do you agree with our proposals on the transparency and accessibility of forbearance options:**

- a. to CONC at CONC 7.3.13A, CONC 5D 3.9G and CONC 5D 3.3G(7)?
- b. to MCOB 13.3.4C?

## Money guidance and debt advice

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- 3.27** Good communication from firms about the potential benefits of debt advice and money guidance, and helping customers understand how to access them, can help to reduce consumer harm. Our Financial Lives survey found that two thirds of debt advice users agreed or strongly agreed that their debts were more manageable having spoken to a debt adviser, and debt advice outcomes were largely positive. As an example, debt advisers can utilise the statutory [Breathing Space](#) scheme to help provide customers with some respite whilst they seek longer term solutions to dealing with their debt.
- 3.28** Our BiFD report found that of the borrowers in financial difficulty who waited more than a month before seeking help, half regretted not making contact sooner. This increased to two in three among those who waited more than 6 months. It found that the majority could have been persuaded to seek debt advice sooner, particularly if they had been given information on what debt advice was and how it could help.
- 3.29** The report identified that some firms treated referrals to debt advice bodies as a routine task to be completed during any conversation or included at the end of a letter and were not clearly or effectively explaining how customers could access debt advice or money guidance.
- 3.30** We want customers to better understand how debt advice and money guidance may benefit them, and to use relevant tools and access appropriate support. The TSG clarified our expectations that firms should help customers understand what types of debt advice and money guidance are available, and to refer or signpost them to it if it meets their needs and circumstances. We propose to incorporate this into the Handbook, along with some additional provisions, to support this aim.

## Credit (including overdrafts)

- 3.31** CONC 7.3.4R currently sets out the requirement that firms treat customers in default or arrears difficulties with forbearance and due consideration. Supporting guidance outlines steps a firm should take to inform and direct customers to appropriate help and support. We propose to supplement this guidance with further provisions including that firms should, where appropriate:

- inform the customer that money guidance and debt advice is available and can be accessed through a range of delivery channels, including digital tools
- effectively communicate to customers the potential benefits of money guidance or free and impartial debt advice from not-for-profit debt advice bodies
- consider whether the customer would benefit from specialist sources of debt advice, such as making a self-employed customer aware of business debt advice providers
- have regard to the Money and Pensions Service Strategic Toolkit when considering how to provide appropriate help and support to customers

**3.32** We are also proposing that this guidance should apply to overdrafts. Where a firm identifies that a customer has a pattern of repeat use, and there are signs of actual or potential financial difficulties, we are proposing that they should also take steps to inform and direct customers to appropriate help and support.

## Mortgages

**3.33** Firms currently have to issue the MoneyHelper information sheet "Problems paying your mortgage" to customers in arrears. This includes information on how a customer can access money guidance or debt advice. We propose to strengthen our expectations in MCOB 13.3.2AR by requiring firms, where appropriate, to also:

- inform a customer that free and impartial money guidance and debt advice is available, including from not-for-profit bodies
- effectively communicate the potential benefits of accessing free and impartial money guidance and debt advice, and the range of channels through which these are available
- signpost or refer the customer to suitable sources of free and impartial money guidance or debt advice

**3.34** The effect of our proposals is that firms will need to consider the potential benefits of these services for individual customers. Where appropriate, we want firms to help customers access tools and services as well as effectively communicate the potential benefits of money guidance and debt advice. We expect this to increase the number of referrals to debt advice bodies. However, our proposals reflect that referrals will not be necessary or appropriate in all cases. Firms will be able to refer customers to regulated commercial debt advice bodies, provided the service provided is impartial and free of charge to the customer.

**Q6: Do you agree with our proposals relating to effective customer engagement and communication around money guidance and debt advice:**

- a. in CONC 7.3.7A?
- b. in MCOB 13.3.2AR?

## Providing information to customers

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**3.35** The TSG set out our expectations that firms give customers appropriate information before providing forbearance to help them to understand their financial position, their options, and the implications of any arrangements. For example, some customers may feel they are making uninformed decisions where the potential implications of the arrangement, including for their credit file, are not made clear. When presented with the relevant information, customers can make informed choices about what action to take. We are proposing to build on the TSG by incorporating this into our Handbook and clarifying our expectations around the information that should be provided to customers.

### Credit

**3.36** We propose to include guidance that will remind firms of their obligations to communicate with customers in accordance with Principle 7 (A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading) or Principle 12 (To act to deliver good outcomes for retail customers).

**3.37** Our proposals also include guidance that firms should:

- make available to customers timely, clear and understandable information which takes into account the individual characteristics of the customer and is sufficient to enable the customer to understand their financial position in relation to their debt, including the potential impact of any forbearance or due consideration on their overall balance and any implications for the customer's credit file
- consider the most appropriate way to engage and communicate with customers, and offer to engage through a range of channels, changing the channel if necessary to enable the customer to engage with the firm effectively

**3.38** For overdraft borrowers, we are mindful of the reluctance of customers to engage with lenders as they are unsure of what support they will be offered, and fear that overdraft limits will be reduced or removed.

**3.39** We propose to restate in our updates to CONC 5D that firms should not suspend or remove overdraft facilities or reduce credit limits if this will cause financial hardship to the customer. We also propose to clarify what is meant by the term "financial hardship" in CONC 5D, which firms should refer to when reading our guidance on when firms should consider the suspension or removal of an overdraft facility or a reduction in the credit limit.

### Mortgages

**3.40** MCOB 13.3.4AR currently requires firms to give customers adequate information to understand the implications of any proposed arrangement.

**3.41** We propose to amend this rule, aligned with the expectations set out in the TSG, confirming this information must include the impact on the customer's overall balance and the implications for the customer's credit file. This is not intended to

be an exhaustive list of information that firms should provide customers, and what is appropriate will depend on the facts of the case. We also propose to require firms to explain the implications of not agreeing an arrangement, for example where the customer is concerned about the effect on their credit file but will likely miss payments anyway. This is intended to help a customer understand the likely greater implications for the credit file if they miss payments without an arrangement.

**3.42** Firms must already provide customers with adequate information to understand the implications of any proposed arrangement, before it is agreed, so that they can make an informed decision. We therefore do not propose to also incorporate an additional requirement that this information be 'timely' aligned with the TSG. However, we welcome views on whether customers should be given a reasonable period to consider the implications of an arrangement before it is agreed and if so, what period is reasonable.

**3.43** We also propose to remove the provision that says a firm may be able to provide information on any new terms in line with the annual statement provisions. We consider that a firm is unlikely to be able to satisfy the proposed information requirements as amended, solely by providing information under the annual statement provisions. In this consultation, we also set out at paragraph 3.70 our proposals to strengthen our rules on providing information to customers in arrears. This will support our expectation that customers receive information to aid their understanding of their financial position.

**Q7: Do you agree with our proposals to include further Handbook provisions on our expectations relating to customer engagement and communication:**

- a. in CONC 7.3.13A and CONC 5D?
- b. in MCOB 13.3.4AR(2)?

## Consequential amendments

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**3.44** Other chapters in MCOB and CONC make reference to provisions that we are proposing to amend as part of this consultation. We are therefore also proposing various minor consequential amendments to ensure these references remain up to date.

### Credit

**3.45** For consumer credit, these consequential changes include amendments to CONC 5 reflecting the references to our Vulnerable Customer Guidance. This may be relevant when firms are developing policies and procedures for the fair and appropriate treatment of vulnerable customers or when having regard to information about vulnerable customers when undertaking creditworthiness assessments. Further consequential changes are made to CONC 6.7 which expand the scope of certain post-contract requirements to customers approaching arrears.

## Mortgages

- 3.46** We are amending references in other MCOB chapters which previously referred to customers in payment shortfalls or arrears to reflect that the proposals that MCOB 13 will refer to the treatment of customers in payment difficulties more broadly. We have identified further consequential impacts to MCOB 14 and 15 which are discussed in paragraphs 3.95-3.96.

**Q8: Do you have any comments on these consequential amendments:**

- a. in CONC?
- b. in MCOB?

## Credit specific proposals

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### Escalating balances

- 3.47** If arrears are not immediately repaid, they may attract fees and interest. Over time, where payments are low and interest rates are relatively high, balances will be more likely to escalate. This can lead to financial harm as customers can have high levels of debt that can be significantly more than the amount they initially borrowed.
- 3.48** Our supervisory work has identified a lack of customer understanding around how balances escalate, and some firms do not inform their customers about the extent of the issue. Some firms have allowed balances to escalate to levels which are clearly unsustainable for customers.
- 3.49** Our proposals on escalating balances already exist as guidance within the TSG. We want to make permanent our expectations that where a firm has put in place a sustainable repayment arrangement as a forbearance measure, and for as long as the customer is meeting the terms of that arrangement, the firm must suspend, reduce, waive or cancel any further interest or charges to the extent necessary to ensure that the level of debt under the arrangement does not rise for the period of that arrangement.
- 3.50** We also propose to introduce guidance which clarifies that where a sustainable repayment arrangement is put in place, the extent to which the firm should suspend, reduce, waive or cancel any further interest or charges may vary over the term of the arrangement. If a customer's circumstances change so that they can pay larger amounts under the repayment arrangement, the firm will not be required to waive as much interest, fees or charges to prevent the balance from escalating.

**Q9: Do you agree with our proposals to introduce requirements on escalating balances where a firm has put in place a sustainable repayment arrangement as a forbearance measure and the customer is meeting the terms of that arrangement?**

## Charges

**3.51** CONC 7.7.5R states a firm must not impose charges on customers in default or arrears difficulties unless the charges are no higher than necessary to cover the reasonable costs of the firm.

**3.52** Our BiFD report and other supervisory work has found that similar firms are charging materially different fees and charges amounts for the same activity. While we recognise that firms have different cost bases, this indicates that some charges may not always be limited to being cost-reflective. To address this, we propose supplementing CONC 7.7.5R with guidance to help firms determine their necessary and reasonable costs in setting fees and charges applied to customers in payment difficulties. These proposals support our price and value outcome under Principle 12 (Consumer Duty).

**Q10: Do you agree with our proposals on introducing guidance to help firms determine necessary and reasonable charges?**

## Sustainable repayment arrangements

**3.53** The TSG for credit set out our expectation that firms agree sustainable repayment arrangements with customers which take into account their priority debts and essential living costs. Our supervisory work found instances of firms agreeing repayment arrangements which leave the customer with no disposable income. Inappropriate and unsustainable repayment arrangements can cause harm as customers may have to cut back on other essential expenditure or take out further credit to pay back as much as they can. If a repayment arrangement is unsustainable, it is also more likely to fail which can result in charges being applied to accounts and debt becoming further entrenched.

**3.54** We propose introducing a requirement that firms must take all reasonable steps to ensure that any repayment arrangements agreed with customers are sustainable. We are also proposing additional supporting guidance which clarifies that a repayment arrangement is unlikely to be sustainable in the context of a forbearance scenario if it results in the customer being unable to meet their priority debts and essential living expenses (such as in relation to a mortgage, rent, council tax, food bills and utility bills).

**Q11: Do you agree with our proposals on sustainable repayment arrangements?**

## Reviewing forbearance measures

- 3.55** The TSG set out our expectations that forbearance measures put in place to support customers should be reviewed to ensure their circumstances have not changed and they remain appropriate for the customer. This was particularly important throughout the pandemic where a customer's circumstances could change quickly, and in a way that might have created new or increased financial difficulties.
- 3.56** We want firms to continue to help ensure that forbearance measures put in place for customers remain appropriate in changing circumstances. We are therefore consulting on a requirement that firms should take reasonable steps to ensure that forbearance measures put in place remain appropriate.
- 3.57** We are also consulting on guidance that what is considered reasonable steps will depend on the customer's circumstances and the nature of the forbearance provided. For example, it may be appropriate to regularly review forbearance measures put in place for a customer at appropriate intervals.

**Q12: Do you agree with our proposals requiring firms to take reasonable steps to ensure that forbearance measures remain appropriate?**

## Income and expenditure assessments

- 3.58** Our current guidance in CONC on income and expenditure assessments sets out that, where appropriate, firms should have regard to the provisions in the Common Financial Statement or equivalent guidance. We propose a new rule, currently reflected in the TSG, that where a firm assesses income and expenditure it must do so in an objective manner, for example by reference to the spending guidelines in the Standard Financial Statement or equivalent guidance.
- 3.59** We are also proposing further guidance which sets out our expectation that firms have clear written policies setting how, and in what circumstances, they conduct income and expenditure assessments. Where a firm carries out an income and expenditure assessment for the purposes of forbearance, it should be to assess whether the proposed arrangements are appropriate and sustainable for the customer. In addition, we propose guidance that firms make available to the customer a record of any income and expenditure assessment that the firm has made to enable the customer to share the record with other lenders and debt advice providers.

**Q13: Do you agree with our proposals for firms to objectively undertake income and expenditure assessments?**

**Q14: Do you agree with our proposed guidance for income and expenditure assessments on clear policies, assessing whether arrangements are appropriate and sustainable and making available to the customer a**

**record of any income and expenditure assessment made to allow them to share with other lenders and debt advice providers?**

## **Repossessions and voluntary terminations**

**3.60** We propose to incorporate key elements of the TSG guidance on repossessions and voluntary terminations as they set out what treating a customer with forbearance and due consideration should take account of in these circumstances.

### ***Repossessions***

**3.61** CONC 7.3.17R states a firm must not take steps to repossess a customer's home other than as a last resort, having explored all other possible options. We propose to also apply this rule to goods or vehicles. Reflecting the TSG we also propose to introduce a new rule that firms must not commence or continue repossession action for as long as the customer is meeting the terms of an agreed forbearance arrangement.

**3.62** We are also proposing supporting guidance which clarifies that:

- Where a customer informs a firm they intend to access debt help or money guidance, the firm should allow customers reasonable time to access it before considering whether to commence repossession action
- A firm may take action to repossess goods or vehicles as a last resort, for example when the firm has made reasonable attempts to engage with the customer and the customer has not engaged
- When considering whether repossession is appropriate, firms should have regard to all aspects of the financial impact on the customer including asset depreciation if repossession is delayed
- Firms should inform customers of the impact of the firm suspending any repossession actions, including on the value of goods or vehicles
- Firms taking or considering taking enforcement action should have regard to our Guidance for firms on the fair treatment of vulnerable customers (FG21/1)

**Q15: Do you agree with our proposals on repossessions?**

### ***Voluntary termination***

**3.63** We propose to transpose guidance from the TSG that where it may be in a customer's interests to exercise their right to terminate a hire purchase or conditional sale agreement under section 99 and section 100 of the Consumer Credit Act, a firm should inform the customer in good time of that right, providing information that is clear, fair and not misleading to help the customer decide how to proceed. Where a customer intends to exercise their rights, firms should consider deferring legal liabilities associated with voluntary termination.

**Q16: Do you agree with our proposals on voluntary termination?**

## Revision to CONC App 1.2

- 3.64** We are proposing an amendment to the rules in CONC App 1.2 in relation to the assumptions that should be applied when calculating the Annual Percentage Rate (APR) in relation to an open-end regulated credit agreement. We are proposing to amend the rule so that lenders will be required to include in their calculation of the APR situations where they may exercise their rights under a continuous payment authority (CPA) to take all of the balance outstanding under the agreement which results in regular redrawing by the customer. This will help address any business models which present potentially misleading APRs. For example, products where interest is applied for a period, but which are then subject to an interest free period may result in APRs being presented which do not reflect typical usage, where CPAs are used alongside Open Banking to recover amounts due before the commencement of the interest free period. In such cases customers often take out subsequent credit which is subject to further interest, so they do not benefit from any interest free period in practice.

**Q17: Do you agree with our proposed amendment to CONC App 1.2?**

## Mortgage specific proposals

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### Increasing balances

- 3.65** Our supervisory work has highlighted that some firms do not consider the impact of a forbearance arrangement on the customer's overall balance. This has the potential to lead to significant harm to customers in financial difficulty. Specifically, if the ongoing payments a customer makes are less than the accruing interest, their outstanding balance will increase. The effect can be exacerbated where interest accrues on arrears and if firms add unpaid fees or charges to the balance which also accrue interest. This can make it more difficult for a customer to get back on track and can lead to poor outcomes if the customer does not have the ability to repay the amount owed, and the firm does not take appropriate and timely action to consider the potential impact of this.
- 3.66** These issues are more apparent where interest rates are higher, and where fees and charges are accounted for separately. We have seen examples where a firm will accept token payments from a customer to forgo action but where the long-term appropriateness of this for a customer's individual circumstances is not considered and the implications of making payments at the level agreed are not adequately explained.
- 3.67** In the TSG we said it was particularly important that firms with second charge mortgages consider using a range of forbearance options, including applying simple interest rather than compound to any payment shortfall, or reducing the interest rate

charged on these sums (in some cases to 0%). The TSG noted that this, when combined with appropriate arrangements to pay, may prevent the balance from escalating to a point where the customer is unlikely to be able to repay the total amount owed, and give customers more scope to effectively address any shortfall.

- 3.68** We are mindful of feedback that this issue may not be limited to second charge mortgages. Therefore, we are proposing that firms should consider whether it is appropriate to reduce the interest rate or apply simple interest in all cases. We also propose to make it explicit that firms, when considering what may be appropriate in a customer's individual circumstances, must take into account the effect of any potential arrangements on the customer's overall balance.
- 3.69** This does not mean that a firm should not agree forbearance that allows a balance to increase, but firms must not ignore the effect of the proposed option on the customer's overall balance. This will therefore need to be factored into the firm's consideration of whether, given the overall circumstances, proceeding with a particular option is appropriate and in accordance with the customer's best interests.

**Q18: Do you have any comments on the increasing balances proposals?**

### Shortfall statements

- 3.70** We want customers in payment difficulty to have timely information about any payment shortfall. We therefore propose to make changes to our existing rules at MCOB 13.4.1R and MCOB 13.5.1R.
- 3.71** MCOB 13.4.1R currently requires a firm to provide certain prescribed information to a customer within 15 days of them falling into arrears (a shortfall equivalent to two or more regular payments). MCOB 13.5.1R requires firms to provide a regular statement to customers in arrears where the payment shortfall or sale shortfall is attracting charges. These statements provide information on the amount of the shortfall, charges incurred and the customer's total debt.
- 3.72** This means that customers who are in shortfall but not yet in arrears do not necessarily receive notification that their mortgage is not up-to-date. And customers with accounts in arrears but not attracting charges may only receive annual statements setting out their arrears position.
- 3.73** We want customers to receive the information they need at the right time. Our expectation under the Consumer Duty is that firms communicate and engage effectively with customers so that they can make timely and properly informed decisions.
- 3.74** We therefore propose to amend the scope of MCOB 13.4.1R so that initial information about missed payments is provided earlier, once a customer is in payment shortfall (by any amount), rather than waiting until they have missed the equivalent of at least two monthly payments. We also propose to extend the scope of MCOB 13.5.1R to require

firms to send further, regular statements, at least quarterly, to all customers who have an ongoing payment shortfall, regardless of whether it is attracting charges. We believe these are proportionate changes, aligned with expectations under the Consumer Duty, to ensure customers are provided with timely information on their financial position, including the impact of any charges when in payment shortfall.

**3.75** Given the proposed changes would expand the scope of these provisions to customers in payment shortfall rather than those solely in arrears, we propose to delete the guidance at MCOB 13.4.3G(2) relating to situations where information is provided before an account falls into arrears.

**3.76** We recognise that there may be instances where inadvertent payment errors occur, for example because of technical issues or direct debit bounce-back, but where the customer is not in payment difficulty. We therefore propose that the information requirements in MCOB 13.4.1R are not triggered if the shortfall is a result of an inadvertent payment error and is cleared within five working days.

**Q19: Do you agree with our proposal to change and extend the scope of the rules in MCOB 13.4.1R and MCOB 13.5.1R to ensure more timely disclosure of information on any payment shortfall?**

## Capitalisation

**3.77** Capitalisation of mortgage arrears or payment shortfalls is when a lender incorporates the payment shortfall into the future regular monthly repayment such that the shortfall is repaid equally over the remaining term of the mortgage. The shortfall on the account is eliminated and the account reported as up-to-date, including for credit referencing purposes.

**3.78** Capitalisation may be appropriate if the customer has recovered from the financial difficulty that caused a payment shortfall but cannot easily and quickly repay the amount outstanding. It can help them more quickly 'repair' their credit record and access new deals. However, where the customer's future ability to pay is unclear it is unlikely to be appropriate to increase a customer's minimum contractual payment. Even when their ability to pay is clear it will often be in a customer's best interests to repay their shortfall more quickly if they can afford to do this.

**3.79** Given the potential downsides of capitalisation our rules currently prevent firms from automatically capitalising a payment shortfall where the impact would be material (MCOB 13.3.4AR(1)(d)). This effectively means that firms cannot use capitalisation as a bulk portfolio-level resolution tool. We propose no changes to this rule.

**3.80** However, despite capitalisation otherwise being available to firms and consumers, we know that firms have found it difficult to justify capitalisation even if they consider it to be appropriate in individual cases. This is because our current guidance says that firms should not agree to capitalise a payment shortfall save where no other option is realistically available to assist the customer (MCOB 13.3.4DG).

**3.81** We propose to amend this guidance to make it clearer that firms can take a more balanced approach to considering the benefits and costs of capitalisation and can agree to capitalisation where it is appropriate in accordance with the customer's best interests.

**3.82** We are consulting on Handbook guidance setting out that capitalisation may be appropriate if:

- the firm reasonably considers, taking into account the root cause of the shortfall, that the customer can afford the monthly payments when the shortfall is capitalised;
- other options to repay the shortfall more quickly have been considered; *and*
- taking account of the customer's individual circumstances, the firm reasonably considers that capitalisation is in accordance with the customer's best interests

**3.83** This would mean that a firm should not immediately capitalise a shortfall simply because a customer asks for this. The proposed guidance makes clear that the firm will need to consider what is in the customer's interests given their circumstances and other available options, including those that would repay the shortfall more quickly.

**3.84** It is also important that customers can afford future capitalised payments. We do not intend to prescribe how firms determine whether a customer can afford the capitalised payments, and so firms will have discretion to consider what is appropriate in individual cases. For example, it may be appropriate to review a customer's income and expenditure in some instances. Alternatively, if a customer has already demonstrated they can afford the new capitalised payments, such as through maintenance of an existing arrangement to pay, the firm may determine that this is sufficient to reasonably consider that the customer can afford the capitalised payments. When considering affordability, firms should take into account the root cause of the shortfall, and whether this has been addressed, as this is likely to be relevant to the customer's ability to pay the capitalised amounts.

**Q20: Do you agree with our proposals to amend the guidance in MCOB 13.3.4DG?**

**Q21: Do you agree with the factors we propose a firm considers when determining whether capitalisation is appropriate?**

**Q22: Do you have any comments relating to determining the affordability of future capitalised payments?**

### **Ensuring arrangements remain appropriate**

**3.85** A customer will typically experience changing circumstances during a period of payment difficulty. Most customers who need forbearance will need to arrange to make reduced payments initially, paying more when they can. They will also need to arrange to repay the shortfall when they can afford to do so.

- 3.86** In the TSG, we confirmed our expectations that firms review customers' arrangements regularly, to ensure that their circumstances have not changed, and the support remains appropriate. This was particularly important throughout the pandemic, where a customer's circumstances could change quickly, and in a way that might have created new or increased financial difficulties.
- 3.87** We want to regularise this practice to ensure customers' forbearance arrangements, particularly arrangements to pay, take account of changing circumstances. We are therefore consulting on a new rule that a firm must take reasonable steps to ensure that any arrangement with a customer in payment shortfall remains appropriate.
- 3.88** We are also consulting on guidance that what is considered reasonable will depend on the customer's circumstances and the nature of the arrangements. For example, it may be appropriate at the outset to agree to regularly review arrangements at appropriate intervals. But it will also involve reacting appropriately to any changes in customer circumstances or to other relevant information the firm is otherwise made aware of, such as by correspondence from a debt adviser. A firm should only offer to renew an arrangement on the same basis where there are compelling reasons to consider that this is appropriate.

**Q23: Do you agree with our proposals for firms to ensure that forbearance arrangements remain appropriate?**

**Q24: Do you agree with our proposed guidance on what we consider to be reasonable steps?**

### **Taking account of wider indebtedness**

- 3.89** In the TSG, we set out our expectations that where a customer indicates that they are having difficulties paying other priority debts, we expect firms to take those debts, and the consequences of falling behind on them, into account when considering or offering forbearance. This is particularly the case when making an arrangement to pay. We propose to incorporate this guidance into MCOB 13.3.4CG, to clarify that a firm should take account of a customer's wider indebtedness when considering what options are appropriate.

**Q25: Do you agree with our proposals to provide additional guidance at MCOB 13.3.4CG to include taking account of wider indebtedness?**

### **Sharing income and expenditure assessments**

- 3.90** In the TSG we set out that where possible and within existing systems capabilities, lenders should share a record of any income and expenditure assessment with customers so that they are able to share them with other lenders and debt advice providers.

**3.91** We propose to add guidance to MCOB 13.3.4CG that where a firm conducts an income and expenditure assessment, they should, where possible, offer to share this with the customer. This will enable the customer to share this with other lenders or debt advice providers, potentially reducing the time they need to spend repeating information regarding their income and expenditure with multiple creditors.

**Q26: Do you agree with our proposal for firms to share income and expenditure assessments with customers where possible?**

## Record keeping

**3.92** The TSG outlined our expectation that firms keep records of the support offered to customers. MCOB 13.3.9R already requires firms to maintain adequate records of its dealings with a customer whose account has a payment or sale shortfall. We therefore propose to extend this rule in line with the expanded scope of MCOB 13, to include records of dealings with customers who may have payment difficulties. This aligns with our earlier proposals to broaden the scope of MCOB 13 to customers who are at risk of payment difficulties.

**3.93** We also propose to clarify that the requirement to record telephone calls with customers that discuss any amount in arrears or subject to payment shortfall charges, includes video calls. This is to ensure consistent practice across firms. We do not propose to extend this provision, for example to require a recording of discussions of all payment shortfalls (regardless of whether they are incurring charges) or all conversations with customers who have or may have payment difficulties. However, some firms may already be recording these conversations and we welcome views as to whether we should extend the rule to record calls to include those with customers in payment shortfall and those who may have payment difficulties.

**Q27: Do you agree with our proposal to extend the rule in MCOB 13.3.9R to include customers who have or may have payment difficulties?**

**Q28: Do you agree with our proposed clarification on recording video calls in MCOB 13.3.9R? Do you agree with our proposal not to extend this to those facing payment difficulties?**

## Application to home purchase plans

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**3.94** MCOB 13 applies (with some exceptions) in respect of regulated home purchase plans, and so home purchase providers and administrators will also be affected by the proposed changes. In addition, as we propose to amend the scope of MCOB 13.4.1R and MCOB 13.5.1R (which only apply in respect of regulated mortgage contracts) to include

customers who are in shortfall, irrespective of the account attracting charges, we propose to amend MCOB 13.8 (which refers to these provisions in the context of home purchase plans) to reflect this change.

**Q29: Do you have any comments on the proposed amendments to MCOB 13.8?**

## Application to MCOB 14 and 15

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- 3.95** MCOB 14 provides (amongst other things) that most aspects of MCOB 13 also apply in respect of certain "MCD article 3(1)(b) credit agreements" (i.e. credit agreements not secured on residential land, the purpose of which is to acquire or retain property rights in land or in an existing or projected building, and which are not exempt agreements).
- 3.96** Similarly, MCOB 15 sets out that certain peer to peer platform operators can, in relation to regulated mortgage contracts facilitated by their platforms, be subject to MCOB 13. Therefore, the changes we are proposing to MCOB 13 would also affect some article 3(1)(b) creditors and some peer-to-peer platform operators.

**Q30: Do you have any comments on the consequential impacts to:**

- a.** MCOB 14?
- b.** MCOB 15?

## Annex 1

### Questions in this paper

- Q1:** Do you agree with our proposed changes to the scope of:
- a. CONC 5 & 7?
  - b. MCOB 13?
- Q2:** Do you agree with our proposals to include a new Handbook rule and associated Handbook guidance, covering the reviews of the effectiveness of policies and procedures:
- a. in CONC 7?
  - b. in MCOB 13?
- Q3:** Do you have any comments on our updated references to the fair treatment of vulnerable customers:
- a. for CONC 7?
  - b. for MCOB 13?
- Q4:** Do you agree with our proposals to add to the existing list of forbearance options at:
- a. CONC 7.3.5G & CONC 5D 3.3(4)G?
  - b. MCOB 13.3.4AR?
- Q5:** Do you agree with our proposals on the transparency and accessibility of forbearance options:
- a. to CONC at CONC 7.3.13A, CONC 5D 3.9G and CONC 5D 3.3G(7)?
  - b. to MCOB 13.3.4C?
- Q6:** Do you agree with our proposals relating to effective customer engagement and communication around money guidance and debt advice:
- a. in CONC 7.3.7A?
  - b. in MCOB 13.3.2AR?
- Q7:** Do you agree with our proposals to include further Handbook provisions on our expectations relating to customer engagement and communication:
- a. in CONC 7.3.13A and CONC 5D?
  - b. in MCOB 13.3.4AR(2)?

- Q8:** Do you have any comments on these consequential amendments:
- a. in CONC?
  - b. in MCOB?
- Q9:** Do you agree with our proposals to introduce requirements on escalating balances where a firm has put in place a sustainable repayment arrangement as a forbearance measure and the customer is meeting the terms of that arrangement?
- Q10:** Do you agree with our proposals on introducing guidance to help firms determine necessary and reasonable charges?
- Q11:** Do you agree with our proposals on sustainable repayment arrangements?
- Q12:** Do you agree with our proposals requiring firms to take reasonable steps to ensure that forbearance measures remain appropriate?
- Q13:** Do you agree with our proposals for firms to objectively undertake income and expenditure assessments?
- Q14:** Do you agree with our proposed guidance for income and expenditure assessments on clear policies, assessing whether arrangements are appropriate and sustainable and making available to the customer a record of any income and expenditure assessment made to allow them to share with other lenders and debt advice providers?
- Q15:** Do you agree with our proposals on repossessions?
- Q16:** Do you agree with our proposals on voluntary termination?
- Q17:** Do you agree with our proposed amendment to CONC App 1.2?
- Q18:** Do you have any comments on the increasing balances proposals?
- Q19:** Do you agree with our proposal to change and extend the scope of the rules in MCOB 13.4.1R and MCOB 13.5.1R to ensure more timely disclosure of information on any payment shortfall?
- Q20:** Do you agree with our proposals to amend the guidance in MCOB 13.3.4DG?

- Q21:** Do you agree with the factors we propose a firm considers when determining whether capitalisation is appropriate?
- Q22:** Do you have any comments relating to determining the affordability of future capitalised payments?
- Q23:** Do you agree with our proposals for firms to ensure that forbearance arrangements remain appropriate?
- Q24:** Do you agree with our proposed guidance on what we consider to be reasonable steps?
- Q25:** Do you agree with our proposals to provide additional guidance at MCOB 13.3.4CG to include taking account of wider indebtedness?
- Q26:** Do you agree with our proposal for firms to share income and expenditure assessments with customers where possible?
- Q27:** Do you agree with our proposal to extend the rule in MCOB 13.3.9R to include customers who have or may have payment difficulties?
- Q28:** Do you agree with our proposed clarification on recording video calls in MCOB 13.3.9R? Do you agree with our proposal not to extend this to those facing payment difficulties?
- Q29:** Do you have any comments on the proposed amendments to MCOB 13.8?
- Q30:** Do you have any comments on the consequential impacts to:
- a. MCOB 14?
  - b. MCOB 15?

## Annex 2

# Cost benefit analysis

## Introduction

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1. FSMA, as amended by the Financial Services Act 2012, requires us to publish a cost benefit analysis (CBA) of our proposed rules. Specifically, section 138I requires us to publish a CBA of proposed rules, defined as 'an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made'.
2. This analysis presents estimates of the significant impacts of our proposal. We provide monetary values for the impacts where we believe it is reasonably practicable to do so. For others, we provide estimates of outcomes in other dimensions. Our proposals are based on carefully weighing up these multiple dimensions and reaching a judgement about the appropriate level of consumer protection, taking into account all the other impacts we foresee.

## Harm we are seeking to address

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3. The TSG was brought about due to the impact coronavirus had on consumers. We are incorporating elements of it into the Handbook to help ensure continued protection for consumers and to ensure greater consistency in the level of support provided by firms.
4. Supervisory work, including our recent Borrowers in Financial Difficulty (BiFD) report found that some firms were falling short of our expectations. This included some customers being treated in a way which may not help them to effectively manage their debt. Some of the harms arise from a lack of effective engagement with customers to help them understand fees and charges and the benefits of debt advice and money guidance, as well as the risk of escalating balances. Our proposals aim to address some practices we have identified as drivers of these harms.
5. The BiFD report and our wider supervisory work has highlighted how harm arises to consumers. The main ways in which this occurs are as follows:
  - Firms not providing forbearance to customers at risk of payment difficulties before they miss a payment
  - Firms failing to effectively engage and communicate with customers including about money and debt advice
  - Firms failing to tailor forbearance options to individual circumstances and failing to regularly review them
  - Some customers experienced significant harm from escalating balances when in payment difficulty

- Customers not always having a clear view of their financial position which means they find it challenging to understand the implications of different forbearance options
  - Firms charged fees to customers in financial difficulty in excess of the costs
- 6.** The Money and Pension Service commissioned a report on the Economic Impact of Debt Advice. The report identified a number of areas where financial difficulties will impose costs on consumers and those who have relationships with them. The report highlighted that debt could impact on factors such as:
- mental and physical health
  - employment and productivity
  - small business health where consumers are small traders
  - subsequent credit access
  - creditor recovery
  - the risk of additional debt cycles
- 7.** Chapter 3 further details the harm to consumers and how we aim to address them.

## Description of the drivers of harm

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- 8.** Our Financial Lives Survey in 2022 found that one quarter of all UK adults had low financial resilience. These individuals may already be in financial difficulty or may find themselves in financial difficulty if they suffered a financial shock as they have little to no savings which means they are unable to absorb the financial shock. Harm can arise if early and effective support is not provided to consumers in financial difficulty.
- 9.** For consumers in payment difficulty, a switch to a different provider may not be possible due to industry practice as some firms do not offer those in arrears a new deal. However, if a switch were possible, consumers may not be able to make informed choices to change to a different lender, as forbearance information is not always transparently available. This information asymmetry is further exacerbated by behavioural biases, as consumers tend to focus on their short-term financial position, which can lead to worsening debt.
- 10.** Some consumers can struggle to deal with their financial difficulties without help from a debt advisor or other debt support service. Support from their lender to access debt advice or support can therefore be beneficial.

## Our proposed intervention

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- 11.** Our proposed interventions are outlined in Chapter 1 under 'What we want to change'. We are transposing relevant parts of the TSG into our consumer credit and mortgages sourcebooks.
- 12.** We also propose:

- For mortgages, improving disclosure for all customers in shortfall, changing our Handbook guidance on capitalisation of shortfalls, and clarifying when firms need to record video conferencing.
- For mortgages we have considered the cost implications for home purchase plan providers and administrators, as well as MCD article 3(1)(b) creditors, who will be impacted by our proposals. Our proposals affecting these firms specifically are set out in paragraphs 3.94 and 3.95.

There are few firms operating in the sector and therefore overall industry costs for home purchase plans are likely to be minimal. We have estimated per firm costs for one-off implementation costs and on-going per firm costs for the debt advice and money guidance proposals in MCOB 13.

Our data on numbers of article 3(1)(b) creditors and their consumers is limited but shows there are very few active firms in the market therefore we cannot estimate total industry costs. We have estimated per firm costs but to scale up from this would result in inaccurate and likely underestimated total costs.

These estimates are reflected in the relevant sections below.

For consumer credit, guidance to help firms determine their necessary and reasonable costs in setting fees and charges applied to customers in payment difficulties.

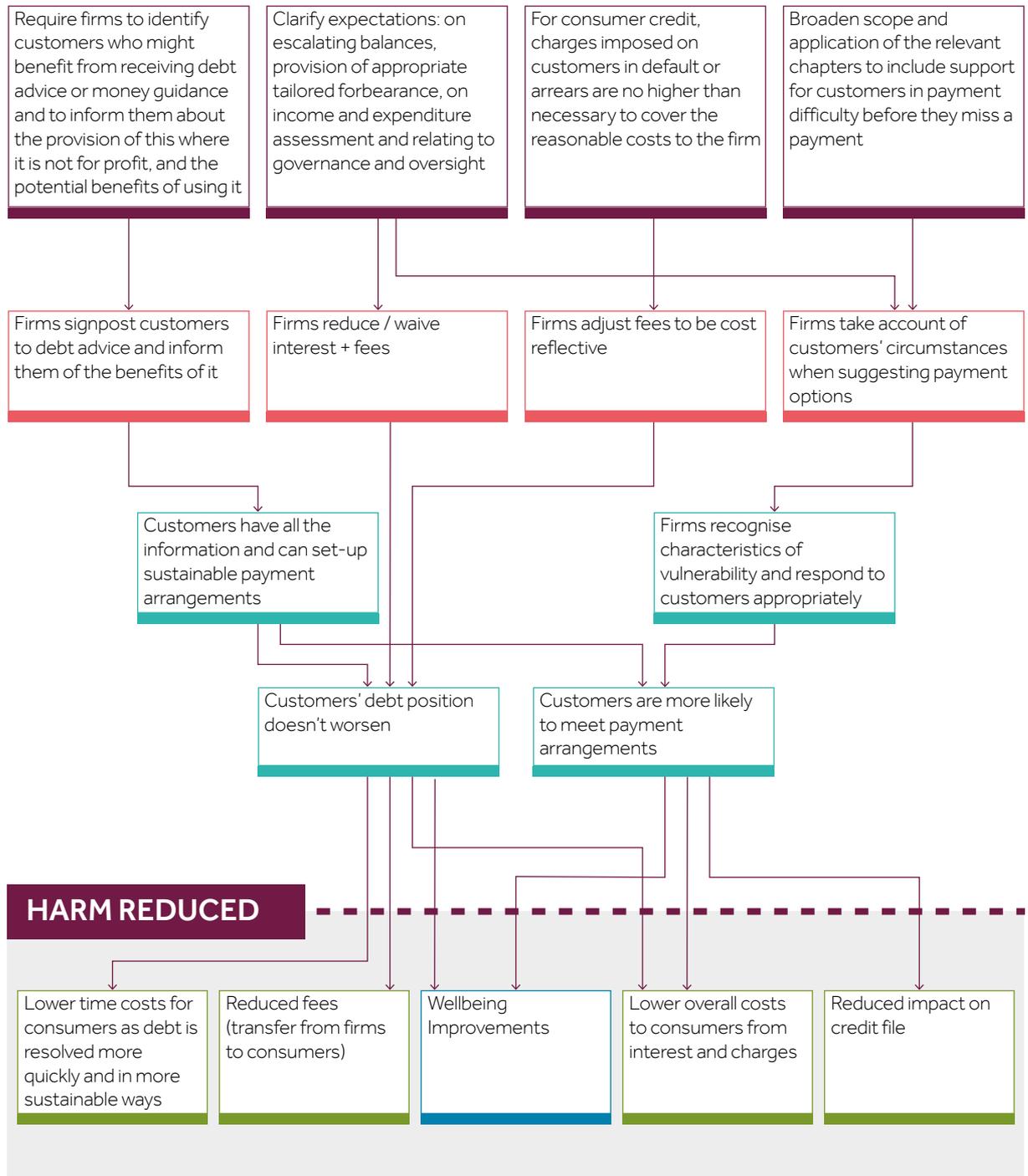
- To help ensure the fair treatment of customers with vulnerabilities, we also propose to add a reference to our [Vulnerability Guidance](#) into our Handbook for consumer credit and mortgages. We do not undertake a CBA of this component as the costs of complying with the guidance are in [GC20-3](#). We do not expect further incremental costs to be incurred from adding a reference and therefore we propose that the costs of this element are not more than minimal significance.
- For consumer credit, consequential changes to CONC 5 reflecting the references to our Vulnerability Guidance. This may be relevant when firms are developing policies and procedures for the fair and appropriate treatment of vulnerable customers or when having regard to information about vulnerable customers when undertaking creditworthiness assessments. As above, we do not expect further incremental costs to be incurred from these amended references and would expect firms to have already considered how to ensure the fair treatment of all vulnerable customers in the context of the Consumer Duty.
- For consumer credit we are also proposing a minor technical amendment to CONC App 1.2 in relation to the assumptions that should be applied when calculating the Annual Percentage Rate (APR) in relation to an open-ended credit agreement. We expect this change will impact a small number of firms, with no material impact on costs or revenue.

## Causal chain

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- 13.** The following causal chain illustrates how we expect our proposals to lead to reduced consumer harm.

**Figure 1: Our causal chain**



- Interventions
- Firm changes/behaviour changes
- Outcomes
- Financial benefit
- Wellbeing benefits

## Baseline and key assumptions

### Baseline

- 14.** The costs and benefits of our proposals must be assessed against a baseline. We have taken our existing Handbook rules as the baseline, along with our Principles for Businesses (primarily Principles 6 and 7). We also consider other non-handbook guidance.
- 15.** The baseline does not include the existing Tailored Support Guidance (TSG) nor the Overdrafts Finalised Guidance (OFG). This is because these guidance documents were temporary measures applied in the exceptional circumstances arising out of the coronavirus pandemic. These guidance documents are temporary and under the do-nothing counterfactual would have to be withdrawn if not made permanent.
- 16.** Table 1 sets out the current regulatory requirements. We expect firms to already comply with these requirements so any costs and benefits from our proposal come from the additional measures we propose in this consultation paper, including those from making aspects of the TSG permanent.

**Table 1: Current regulatory requirements**

Baseline	Examples
Rules	<u>MCOB 13*</u> for mortgages <u>CONC 5* &amp; 7</u> for overdrafts and consumer credit
Principles for business	<b>6*</b> Customers' interests A <i>firm</i> must pay due regard to the interests of its <i>customers</i> and treat them fairly. <b>7*</b> Communications with clients A <i>firm</i> must pay due regard to the information needs of its <i>clients</i> , and communicate information to them in a way which is clear, fair and not misleading.
Non-handbook guidance	<u>Guidance for firms on the fair treatment of vulnerable customers</u> <u>The fair treatment of customers in payment shortfall</u> <u>Non-Handbook Guidance for firms on the consumer duty</u>

\* Numbers refer to chapters within the handbooks

- 17.** The current economic position is likely to increase the numbers of consumers affected by our proposed rule changes as more customers become unable to repay their debts. However, the extent of this is dependent on when these proposals are implemented and the economic position at that time. Increased interest rates and very high rates of inflation have put many consumers' finances under pressure. However, we cannot predict how the numbers of accounts in payments shortfall or arrears might change and for how long. In absence of better information, we have used existing levels in our calculations and have assumed, on average, a constant level going forwards.

18. We compare our proposals against this baseline to arrive at an assessment of costs and benefits.

## Affected firms

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19. For mortgages, our proposals affect all firms with permissions for administering mortgages. For consumer credit, a broad range of firms, including retail banks, non-bank lenders, motor finance providers, consumer hire firms and debt collectors are affected. The firms included do not include brokers. Firms providing overdraft facilities are also affected. In total, this covers around **2,700 firms**. We note that some firms will offer/provide multiple impacted products.
20. There may be consumer credit firms affected by our proposals in the supervised run-off mechanism of the financial services contracts regime as well as Gibraltar-based consumer credit firms passporting into the UK. Our data on these firms is limited but we expect the total number of firms to be low in proportion to the full credit markets. We do not have any evidence to suggest there are any mortgage lenders in these groups.
21. For the purposes of the CBA, where a firm is likely to be affected by both mortgages and consumer credit proposals, we have counted them more than once. For example, if a bank administers mortgages, provides overdrafts, and has permission for consumer credit lending, then it will be counted three times. We have taken this approach to reflect the fact that some firms administer these products separately. As such, the total number of firms across mortgages, overdrafts and consumer credit will be greater than 2,700 as some firms are included in more than one area.
22. As our [how we analyse the cost and benefits of our policies document](#) explains, we categorise firms according to size as this helps us to estimate the cost of implementing our proposals.
23. The number of firms which would be affected by our proposals are listed in Table 2, split by sector and firm size.

**Table 2: Number of firms by firm size split by activity:**

Firm Size	Mortgages	Consumer Credit	Overdrafts
Small	95	2,238	37
Medium	83	140	6
Large	16	57	10
Total	194	2,435	53

24. We have classified mortgage firms into size based upon the number of mortgage accounts they report to us as administering. Almost all firms with mortgage lending permissions have mortgage administering permissions.

25. For consumer credit, we have included all firms which hold consumer credit permissions and are subject to CONC 7 rules. This will include a number of firms which are not currently active and, as such, our estimates of costs are likely to be an over-estimate. We have classified these firms according to size, using the standardised cost model methodology.
26. For overdrafts, we have categorised these into sizes by the number of arranged overdrafts reported to us by firms.
27. All active firms in these sectors will at some point have customers in payment or arrears difficulties and therefore will be affected by our proposed changes.
28. We expect dual-regulated firms will incur the same costs as solo-regulated, because the Prudential Regulation Authority (PRA) has no separate equivalent requirements.
29. We have not included article 3(1)(b) firms, home purchase plans, consumer credit firms in the supervised run-off mechanism of the financial services contracts regime or Gibraltar-based consumer credit firms passporting into the UK in Table 2 above due to their population sizes being unknown and/or very small. We do not believe their exclusion has any material impact on our analysis.

## Data

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30. We have used our standardised cost model estimates, supplemented with other data available to us, to estimate the compliance costs to firms of implementing our proposals. Primarily, this is data available via regulatory reporting, supplemented by supervisory intelligence and our Financial Lives Survey.

## Key assumptions

31. For the purposes of this CBA, we have made the following assumptions:
  - unless stated otherwise, all references to 'average' in this CBA are the mean
  - all cost estimates are in nominal terms
  - we assume 100% compliance with our proposals if they are finalised
  - we assume an appraisal period of 10 years (as we expect these proposals to remain in place for at least 10 years)
  - we use 2021 prices

## Cost and benefits

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32. The following table summarises the estimated total costs and benefits of our proposals across mortgages, consumer credit and overdrafts. It also sets out those we have not been able to quantify.

**Table 3: Total costs and benefits**

Measure	Quantified Costs, £m	Quantified Benefits, £m
One-off costs (familiarisation, training, IT and governance) of policy package	16.1 <sup>1</sup>	-
TSG – signposting debt advice (annual, ongoing)	6.8	-
TSG – well-being effects from reducing escalating balances (annual)		5.7-10.7
Mortgage shortfall Statements (annual, ongoing)	0.4	-
Total costs/benefits	One-off – 16 Ongoing – 7.2	One-off – 0 Ongoing – 5.7-10.7
Total discounted costs / Benefits over 10 years <sup>2</sup>	78.5 <sup>3</sup>	49.2-91.8
Unquantified benefits	Lower overall costs to consumers from interest, fees and charges Lower time costs Reduced time and effort by firms and consumers on dealing with debt and arrears Reduced negative impact on consumers' credit files	

- 1 One off cost are costs from measures in both TSG and our other two interventions, as due to the nature of these it would not be proportionate to split them out by the respective parts.
- 2 We have not included the costs / benefits from the consumer credit fees proposal in the 10-year discounted figures as this is a transfer
- 3 We have not included total costs here where we do not have full data on firm numbers

- 33.** Over a ten-year period, discounted using standard HMT appraisal guidance assumptions, expected total costs are £78.5m with quantified benefits ranging between £49.2m and £91.8m, as well as additional unquantified benefits.
- 34.** The large one-off costs are mainly due to the large number of firms affected - 194 mortgage firms, 2,435 consumer credit firms, and 53 overdraft firms. The other large element of the costs is due to the lost fees under the consumer credit requirements, which are nevertheless a transfer from firms reducing the amount payable from consumers (the benefit).
- 35.** We have estimated that around 10m to 12m consumers may benefit from our proposals over a 10-year period.
- 36.** For the policy to breakeven, each consumer would on average need to receive additional benefits of £6 and £8. Given the benefit required to break-even is small, and because we know there are many benefits of our proposals, we can say the costs are proportional to address the harm to consumers.

## Costs

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- 37.** This section explains the costs of our proposals on firms and consumers in more detail. It provides estimates of the one-off industry costs of familiarisation and legal review/gap analysis, changes to processes, training, and IT systems. It also considers any on-going costs to firms.

### One-off direct costs

- 38.** These costs include the time and resources spent by firms familiarising themselves with the proposals and performing both a legal review and gap analysis to identify the necessary changes.
- 39.** Most of our proposals focus on reinforcing existing good practices, rather than substantially changing our expectations on firms. Therefore, some firms may not incur significant costs as they are already meeting many of our expectations set out in these proposals. This is reflected in the underlying assumptions of the estimated costs incurred by firms.
- 40.** Firms may incur one-off costs to comply, for example by making changes to staff training materials or call scripts. In most cases, these costs should be limited. For example, firms are already required to ensure they train staff to explain the implications of payment arrangements to customers, so adding the impacts on credit files and overall balance to this explanation is a small change. One area where costs may be higher is where we have introduced new provisions to explain the potential benefits of money guidance and debt advice to customers.

### Familiarisation, legal review, and gap analysis

- 41.** We use standard assumptions to estimate familiarisation costs. There are 30 pages of policy documentation that firms will need to familiarise themselves with. As per our standardised costs model, we assume there are 300 words per page. Assuming a reading speed of 100 words per minute, it would take approximately 1.5 hours to read the policy documentation.
- 42.** As per our standardised cost model, it is estimated that there will be 20 compliance staff at large firms, 5 staff at medium firms, and 2 compliance staff at small firms who need to read the policy documentation. The hourly compliance staff salary is assumed to be £62 at large firms, £65 at medium firms, and £47 at small firms, including 30% overheads.
- 43.** We also expect firms will undertake a legal review and gap analysis of the new requirements against current practices. Using the standardised cost model, we utilise salary costs for legal staff to estimate the costs for this activity.
- 44.** It is estimated that this legal and gap analysis review will involve 4 staff at the largest firms, 2 staff at medium firms and 1 member of staff at small firms. There are around 15 pages of legal instruments each for mortgages, consumer credit and overdrafts. It is

assumed that each legal staff member can review 50 pages of legal text per day. Using salary data from a standardised cost model, the hourly legal staff salary is set at £72 at large and medium firms, and £57 at small firms, including 30% overheads.

- 45.** Costs for familiarisation, legal review, and gap analysis, per firm are approximately:
- Small firm – £300
  - Medium firm – £1,400
  - Large firm – £4,300
- 46.** This led us to the following total one-off cost of familiarisation, legal review, and gap analysis to the industry:
- Mortgages – £210,000
  - Consumer credit – £1,000,000
  - Overdrafts – £61,000
- 47.** In total, we expect familiarisation, legal review, and gap analysis costs of £1.3m.

### **Governance and process change**

- 48.** This section sets out the ways in which our proposals will require firms to change their internal processes and governance. Whilst we are not proposing a completely new framework for firms' treatment of customers in financial difficulty, we do expect some adjustments. For example, firms will need to review their communication policies for customers in payment difficulties, to ensure they are in line with our expectations. For the purposes of the standardised costs model, we have assumed that the size of the project will be 'small'.
- 49.** In line with our standardised costs model, the total number of days for the project team and the manager are assumed to be 3 at small firms, 14 at medium firms, and 45 for large firms, as well as some time for the board and executive committee reviews.
- 50.** For an individual firm (mortgages, consumer credit and/or overdraft provider), this cost translates to approximately:
- Small firm – £1,000
  - Medium firm – £7,000
  - Large firm – £19,000
- 51.** These are calculated by taking the daily salary cost for four different teams within each firm type (project manager, project team, board oversight and executive committee oversight) and multiplying this by how many days each team spends on the proposed changes.
- 52.** This results in the following total one-off cost of process changes to the industry:
- Mortgages – £988,000
  - Consumer credit – £4,392,000

- Overdrafts – £271,000

**53.** These are calculated by multiplying the above figures by the total number of firms in each product group as listed in Table 2.

**54.** In total, we expect governance and process changes to cost £5.7m.

## Training costs

**55.** Firms will need to train existing staff to comply with the proposed changes to our Handbook. Much of this training will be adjustments to existing training programmes. New training may be required for the enhanced engagement on the benefits of money guidance and debt advice, and some firms may decide to commission outside providers for this.

**56.** Overall, we have categorised the training as 'standard' for the purposes of the standardised costs model. We have also adjusted the assumptions in the model so that training is assumed to be carried out in-house. The costs model normally assumes that 40% of medium firms' training is carried out externally, and aside from the potential new training required for the enhanced engagement on the benefits of money guidance and debt advice, we do not think this is a correct assumption for this CBA. We think it unlikely that firms utilise outside providers for training their staff on how to treat their own customers in financial difficulty.

**57.** These additional training costs represent one-off costs as the new training will only need to be organised once. While the training will also be delivered when existing staff leave and are replaced, for the purposes of this CBA this is not considered to be a material incremental cost. This is because it will become part of the normal training which firms carry out for such staff when onboarding.

**58.** For our standardised costs model, we estimate the number of staff which would need to be trained. We assessed these would be staff working in what are commonly termed as 'collections' departments in firms, as well as those dealing with vulnerable customers in financial difficulties. We assessed this may represent on average per firm: 150 staff (large firm); 60 staff (medium firms); and 10 staff (small firms). These numbers are based on information provided to us by some firms during supervisory work. We also assumed the training time required is up to 1 hour per employee.

**59.** The total industry costs are calculated by estimating the hourly wage for staff who need to be trained and multiplying this by the total number of hours spent training. The cost of development and delivery for the training is also added to the total cost.

**60.** We expect the cost to the industry in total, to be approximately:

- Mortgages – £351,000
- Consumer credit – £1,141,000
- Overdrafts – £84,000

**61.** In total, we expect training costs of £1.6m.

## IT

- 62.** We recognise that some firms will incur one-off IT costs as a result of our proposals. Whilst our proposals do not explicitly require any IT system changes, we recognise that some changes may be needed.
- 63.** For example, changes to staff prompts or call scripts, or to customer facing systems. Firms will also need to ensure management information is adequate, in relation to our specific governance proposals. These are not large IT system changes and will mainly require small adjustments. For the purposes of the standardised costs model, we consider that the project size will be 'small'.
- 64.** For mortgages we are proposing a new requirement for firms to issue shortfall statements. The related on-going costs of providing these statements are calculated separately – see the separate section below.
- 65.** We estimate that the project would be 5 days long for large firms and 2 days long for medium firms with in-house IT. Across the standard IT project team structure, this leads to a total of 46 person days in large firms and 8 days in medium firms.
- 66.** We have assumed that small firms will not have in-house IT resources. For small firms we have assumed the IT costs to be equivalent to 8 days per firm (the same as for medium firms).
- 67.** For an individual firm, this cost translates to approximately:
- Small firm – £2,000
  - Medium firm – £3,000
  - Large firm – £19,000
- 68.** This is calculated by taking the daily salary for each of the various staff members involved in IT changes and multiplying this by the total number of days each member is involved in the project.
- 69.** For small firms our standard cost model assumes only one programmer works in IT and therefore we take their daily salary and multiply this by 8 days to get the total firm cost.
- 70.** This results in total one-off cost of IT changes to the industry, as follows:
- Mortgages – £778,000
  - Consumer credit – £6,823,000
  - Overdrafts – £292,000
- 71.** In total, we expect IT costs of £7.9m.

## Article 3(1)(b) Creditors

- 72.** We do not have data on the number of firms in the sector and also do not know firm sizes.
- 73.** Given our understanding that the number of firms in the sector is small, we believe therefore the total industry costs for these firms will be small.

- 74.** We can estimate one-off per firm costs of implementing the measures related to MCOB 13 for article 3(1)(b) creditors using the same set of assumptions as we did for mortgage firms in the above paragraphs to give an indication of the scale of impact to individual firms. We have taken the average one-off costs across firm sizes to give us an average per firm cost. These costs include familiarisation, governance and process change, training, and IT costs.
- 75.** We estimate the average per firm one-off implementation costs to be £12,000.
- 76.** Given the lack of data on firms in the sector our estimate of per firm implementation costs are likely an underestimate as the average is calculated using the assumptions for mortgages firms and doesn't account for the split of firm sizes across the market which would impact costs.
- 77.** We have not included this cost in our totals in Table 3 as we cannot accurately estimate total industry costs from our average per firm cost.

### **Home Purchase Plans**

- 78.** As stated at paragraph 19 the number of firms active in the market is very small and therefore total industry costs are likely to be minimal.
- 79.** We have estimated one-off per firm costs, as we have done for article 3(1)(b) creditors at paragraph 74, for implementing proposals related to MCOB 13.
- 80.** The average one-off implementation costs are estimated to be £12,000 per firm.
- 81.** We have calculated the implementation costs using the same set of assumptions as we have used for mortgages firms therefore our cost estimates are likely an underestimate as it doesn't account for the split of firm sizes across the market which would impact costs.
- 82.** We have not included this cost in our totals in Table 3 as we cannot accurately estimate total industry costs.

### **Consumer credit firms in the supervised run-off mechanism of the financial services contracts regime and Gibraltar-based consumer credit firms passporting into the UK**

- 83.** As stated at paragraph 20, there may be consumer credit firms in the supervised run-off mechanism of the financial services contracts regime and Gibraltar-based consumer credit firms impacted by our proposals.
- 84.** As the data is limited, we cannot fully estimate costs to all firms. However, we can estimate one-off costs per firm of implementing the measures for these firms using the same set of assumptions we used for the main consumer credit firms to give an indication of the scale of impact to individual firms. We have taken the average one-off costs across firm sizes to give us an average per firm cost. These costs include familiarisation, governance and process change, training, and IT costs.
- 85.** We estimate the average per firm one-off implementation costs to be £5,000 per firm.

86. Given the limited data on firms in the sector, our estimate of per firm implementation costs is likely an underestimate as the average is calculated using the assumptions for consumer credit firms and does not account for the split of firm sizes across the market which would impact costs. We have not included this cost in our totals in Table 3 as we cannot accurately estimate total industry costs from our average per firm cost.

### **Ongoing direct costs: Loss of revenue**

87. We have considered whether any of our proposals could result in any direct loss of revenue for firms. We have identified this may occur for proposals which:
- clarify the range of forbearance options which a firm must consider
  - require firms to consider/take steps to address escalating balances
  - adjust our arrears charges guidance in the consumer credit sourcebook
88. However, we consider that loss of revenue costs only occurs for consumer credit arrears charges, as set out below in detail. For clarity, we do not consider that any of the proposed changes concerning overdrafts present any potential for a loss of revenue for firms.

### **Forbearance options**

89. Our existing mortgages rules (MCOB 13.3.4AR) include a non-exhaustive list (MCOB 13.3.4CG) of options which firms are required to consider when considering forbearance.
90. Our consumer credit rules (CONC 7.3.4R & CONC 7.3.5G) provide a list of examples of forbearance options. We propose to add some further examples to these provisions.
91. In practice, mortgage and consumer credit firms are expected to consider a broader range of forbearance options, therefore our proposals make some options more explicit. We do not believe these proposals will materially impact upon firm revenues. Our additions will help firms to consider the most appropriate arrangement for their customers.

### **Escalating balances**

92. Escalating balances can cause harm to consumers who may end up owing more than the amount that they borrowed. Our proposals to reflect and build on the provisions in the TSG are set out in Chapter 3 above.
93. For context, it is important to note that we do not consider customers who are behind with their payments as a notable revenue or profit driver for firms. We are aware that from an accounting perspective, large escalated balances are generally 'written off' by firms as they are rarely recovered in full. As such, we have assessed that there will be no direct loss of revenue to firms.

### **Arrears charges – Consumer Credit only**

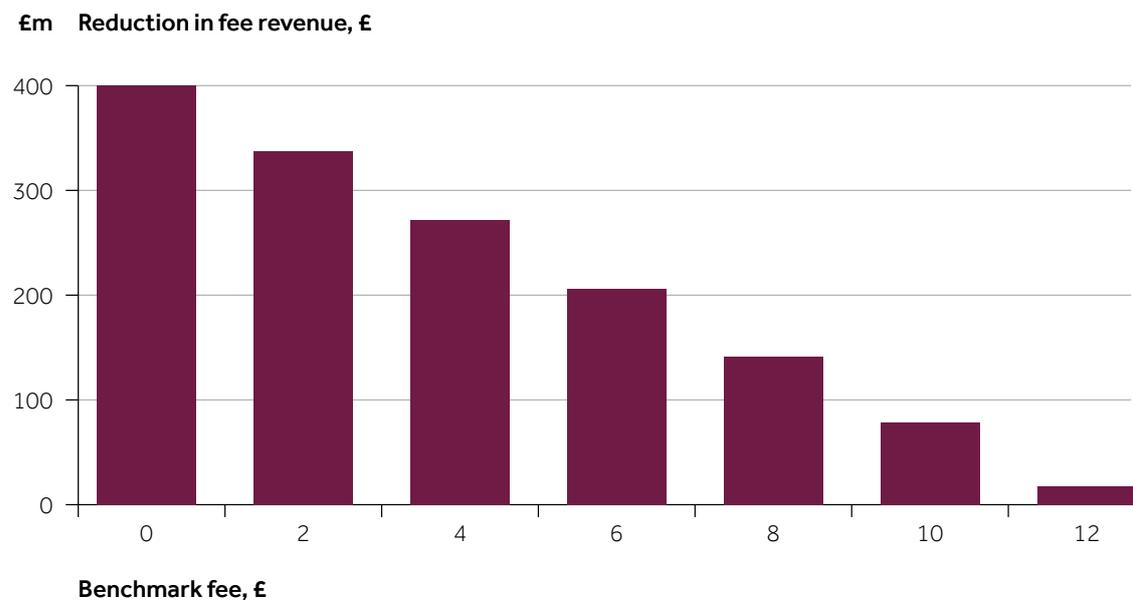
94. Our existing rule at CONC 7.7.5R requires arrears charges to be cost-reflective. It states that firms must not impose charges on customers in default or arrears unless the charges are no higher than necessary to cover the reasonable costs of the firm.

- 95.** We propose to add guidance to help firms in determining their necessary and reasonable costs in setting fees and charges applied to customers in payment difficulties.
- 96.** Our 'baseline' for the CBA includes our rules, informed by our Principles for Business, and non-handbook guidance. Under our proposals, some firms will not need to adjust how they impose charges. However, some firms will have to review their processes and make adjustments as a result of our proposal.
- 97.** We have recently collected data on fee levels in our Cost of Living Data Collection, with data spanning from July-November 2022. This data shows that many firms do not charge multiple types of penalty fee, while other firms charge these fees. This is in line with the findings presented in our BiFD report. On average, firms in the sample only charge around one fee, out of the five fees we look at, for each of the product categories they operate in.
- 98.** To make an assessment of potential costs to firms we have analysed this Cost of Living data. Firms provided the number and value of penalty fees they charged for different products for slightly different periods. Some firms provided quarterly data for the July – September period but others provided monthly data from September onwards.
- 99.** Our analysis focusses on the following types of fees:
- Unpaid direct debit fee
  - Late payment fee
  - Arrears fee
  - Correspondence fee
  - Over limit fee
- 100.** We focus on these fees because we think they are most likely to be affected by our changes as the costs of these elements are applied frequently, or because the costs considered when setting fees are wider than in our proposals.
- 101.** We multiplied the value and the number of fees charged in the latest data provided by each firm by either four or twelve to get an annual amount, and calculated the average fee charged.
- 102.** We do not know how firms may adjust their fees due to our proposals as we have not collected data on the costs of undertaking the activities related to penalty fees. However, we estimated the reduction in fees which would occur if the costs associated with each particular activity were below a benchmark fee. For example, where a firm charges a fee above the benchmark, we reduce fees to that benchmark and calculate the reduction in fees. Firms charging fees at or below the benchmark are unaffected and suffer no revenue loss.
- 103.** To calculate the reduction in fees we multiply the reduction in average fees required to meet the benchmark multiplied by the number of fees charged. We assume that fees are only reduced and not increased as a result of firms reviewing their costs and fees.
- 104.** To get industry estimates we used CCR003 data to scale the sample to the wider population. The population of consumer credit firms provides data on the number of

arrears in CCR003. We used the latest data submission for each firm as firms do not report data for the same period.

- 105. We scaled the fee losses to the industry from the sample by the ratio of arrears in the total population of firms to arrears in the Cost of Living Data Collection sample firms.
- 106. We estimate that penalty fees are around £400m per year. This is the upper bound effect of our rules. This level of reduction would only occur if all fees were removed, which we cannot accurately assess the likelihood of. Individual firms will have to assess whether their current fees and charges are reasonable, reflecting the direct costs of the additional administration resulting from the customer being in payment difficulty.
- 107. As we cannot fully anticipate the outcome of these assessments, for the purposes of this CBA we have used the upper bound figure to reflect the maximum costs to firms. This recognises that there are a number of firms which currently charge £0 for a variety of fees.

**Figure 4: The potential annual revenue effect of lower default fees in consumer credit**



Source: FCA analysis of Cost-of-living consumer credit data on fees (Unpaid Direct debit, Late payment, Arrears, Correspondence, Over limit) scaled by CCR003 reporting information on number of arrears.

- 108. This is likely to be a significant overestimate on the true cost to firms from a reduction in fees. This is because in many instances these fees represent a notional amount of debt. Consumers who are charged these fees in many instances may never repay the debt and the associated fees. Consequently, the revenue loss to firms will only be a proportion of the amount estimated.
- 109. We acknowledge that this is a transfer from firms to consumers. We account for this transfer in the benefits section, but it is not included in our overall assessment of costs and benefits.

### **Capitalisation – Mortgages only**

- 110. Our proposed amendment to the Handbook guidance on capitalisation will affect the timing and level of revenue for firms, as well as the interest payment made by

customers. Where a shortfall is capitalised, it is usually repaid over a longer period than would be the case with other forbearance arrangements. Consequently, lenders will receive more interest payments when a shortfall is capitalised. We do not think that these increased interest payments will be particularly large, given that the shortfall will only be a small proportion of the overall balance, and changes to the interest rate will be made on the shortfall balance. We note that any higher interest payments are a transfer from customers to firms.

### ***Ongoing direct costs***

- 111.** We do not expect our proposals to result in any materially significant ongoing direct costs for firms, except for our proposals concerning:
- Increased customer transaction times related to debt advice and money guidance – all firms
  - Mortgage shortfall statements – mortgage firms

### ***Increased customer transaction times***

- 112.** For the proposals relating to debt advice and money guidance, including explaining the benefits of these, we have assessed ongoing costs in terms of an increase to customer transaction times. In 2021 there were 207,000 mortgage accounts in payment shortfall, 3.6 million overdrafts, and 5 million consumer credit accounts in arrears.
- 113.** To estimate costs, we have assumed each account represents a different customer, and each customer would be signposted to debt advice or money guidance and have the benefits of these explained to them. From regulatory reporting data, Financial Lives Survey and CRA data, the total number of customers who would be impacted by these proposals is between 8.8m and 13.8m across mortgages, overdrafts, and consumer credit. However, we cannot accurately say whether all customers will want to interact with their lender.
- 114.** Although we have estimated additional costs from this proposal, these may be cancelled out if it results in more customers taking advantage of debt advice, leading to fewer interactions with customers in payment difficulties who are able to better manage their debts.
- 115.** Using our standard cost model and our standardised assumptions, which is based on salary data from Willis Towers Watson, we have used the average salary across firm size for banking branch sales staff to estimate a wage per minute, including overheads for small medium and larger firms. From this we calculate a weighted average cost per minute across all firms and multiply this by the total change in minutes to get a total industry cost.

### ***Mortgage firms***

- 116.** Based upon regulatory reporting data for mortgages in H2 2021, there were 207,000 customers in shortfall. Regulatory reporting data also shows us that the average amount of time for a customer to be in arrears is approximately 12 months. Whilst shortfall periods may be on average less than this, we can use the 12 months as a proxy.

- 117.** We have assumed that payment arrangements are reviewed several times in a 12-month period of arrears. If a firm were to contact their customer at each point a new or reviewed payment arrangement is agreed, we estimate that would result in 3 interactions in the year, in which we expect it may be appropriate to discuss debt advice and money guidance.
- 118.** If, on average, the debt advice and money guidance proposals were to add an additional 10 minutes on to each interaction, that would result in an additional 30 minutes per customer (207k) per year.
- 119.** We estimate the cost of additional interaction time by using salary information from our standardised costs model and explained in paragraph 115.
- 120.** This represents a total additional industry cost of £2.5m per annum.
- 121.** We recognise that firms will liaise with customers about proposed arrangements when they are not in shortfall or arrears, for example, customers in financial difficulties who are concerned they will not be able to make their next payment. We believe that using the number of customers already in shortfall/arrears is a sufficient measure. These customers are effectively the same population, but at an earlier stage of their payment difficulties, and therefore this creates an upper bound estimate of the potential numbers of customers affected.

### ***Article 3(1)(b) Creditors***

- 122.** The debt advice and money guidance proposals in MCOB 13 will also be applicable to article 3(1)(b) creditors and we have assumed the same assumptions as for mortgage firms.
- 123.** We do not know the total number of consumers who have accounts with these creditors and who would be eligible for the support therefore we cannot estimate total costs for the proposal.
- 124.** However, assuming 30 additional minutes per consumer who is eligible and using the same method as at paragraph 115 to calculate the costs to firms we estimate the average cost would be less than £20 per consumer.
- 125.** We have not included this cost in our totals in Table 3 as we cannot accurately estimate total industry costs.

### ***Home Purchase Plans***

- 126.** The debt advice and money guidance proposals in MCOB 13 will also be applicable to home purchase plans and we have assumed the same assumptions as for mortgage firms.
- 127.** We do not know the total number of consumers who would be eligible for this support who have accounts with home purchase plans, so we are unable to calculate total costs for firms.

- 128.** However, assuming 30 additional minutes per consumer who is eligible and using the same method as at paragraph 115 to calculate the costs to firms we estimate the average cost would be less than £20 per consumer.
- 129.** We have not included this cost in our totals in Table 3 as we cannot accurately estimate total industry costs.

### ***Consumer Credit firms***

- 130.** We have cross-referenced several data sources to estimate the number of customers who may be in arrears and affected by our proposals on debt advice and money guidance. As not all firms report into all sources of data, we estimate that up to 5 million consumers were in arrears from CRA data for 2021. We have also assumed that if a person is in arrears for several years, it is likely they will not receive debt advice every year, and we are only interested in those consumers who enter arrears each year, and not the total amount of people in arrears.
- 131.** We have estimated costs based on an average of 5 minutes transaction time by firms with each customer per year. As with overdrafts, many consumer credit products will not be seen as 'priority' debt. Whilst we expect all firms to try to contact all customers in actual or potential financial difficulty, not all customers will be willing to engage. We have assumed only 1/3 of customers will engage with firms signposting them to debt advice. Therefore, the additional numbers of customers we expect to speak with firms is around 1.7m.
- 132.** On this basis we expect that the additional total industry cost by signposting 1.7m customers to debt advice, will be £2.7m per annum, calculated as per paragraph 115.

### ***Consumer credit firms in the supervised run-off mechanism of the financial services contracts regime and Gibraltar-based consumer credit firms passporting into the UK***

- 133.** The debt advice and money guidance proposals will also apply to firms in the supervised run-off mechanism of the financial services contracts regime and Gibraltar-based consumer credit firms. We have used the same assumptions as for consumer credit firms to estimate the cost to individual firms to implement this.
- 134.** We do not know the total number of customers who have accounts with these creditors and who would be eligible for the support, therefore we cannot estimate total costs for the proposal.
- 135.** However, assuming 5 additional minutes per customer who is eligible and using the same method as at paragraph 115 to calculate the costs to firms, we estimate the average cost would be less than £10 per customer.
- 136.** We have not included this cost in our totals in Table 3 as we cannot accurately estimate total industry costs.

### **Overdraft providers**

- 137.** Our Financial Lives Survey data (2020) indicates that there are 3.6 million customer accounts which were overdrawn at the time of the survey, or in the previous 12 months, and are overindebted.
- 138.** Our proposals may increase the time taken for firms to discuss debts with affected customers. Overdraft repayments are generally a lower priority than debts such as mortgages. Further, transactions with customers tend to be briefer than for example, mortgages. We have therefore assumed that each firm will transact with each of its customers, which the proposals on debt advice and money guidance apply to, for an average of an additional 5 minutes per year.
- 139.** We estimate about 1 in 4 customers will contact their lender and be signposted to debt advice and have the benefits of this explained to them.
- 140.** On this basis, the additional number of customers who would speak with firms and be signposted to debt advice would be 900,000 per year.
- 141.** This represents a total additional industry cost of £1.6m per annum, calculated as per paragraph 115.

### **Mortgage shortfall statements**

- 142.** We propose to introduce a new requirement for firms to send statements at least quarterly to all customers in payment shortfall. Currently, firms must provide such statements when customers are in arrears (i.e. the customer has a payment shortfall equivalent to two or more monthly payments) and the shortfall on their account is attracting charges.
- 143.** To calculate the predictive cost of this per year, we used the numbers of customers who were in shortfall (and not in arrears) in 2021. This was 108,000 customers as of H2 2021 from regulatory reporting data. We then multiplied this by £1, which is just over the current cost of a first-class stamp (95p), and then multiplied this by 4 as the statements are quarterly. We note that some consumers will receive electronic communications, and the proportion of consumers who use this medium will increase over time. Therefore, we think this estimate is likely to be an overestimate.
- 144.** The total industry cost for providing mortgage shortfall statements is £431,000 per year.
- 145.** Firms report the number of accounts they hold to us through regulatory data. Large firms hold 87% of the total accounts, medium firms 13%, and small firms 1%. We use this information to apportion the total costs to the three different groups as follows (totals do not add up due to rounding):
- Small firms – £1,000 total industry cost per year
  - Medium firms – £55,000 total industry cost per year
  - Large firms – £376,000 total industry cost per year

## Cost to consumers

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- 146.** We consider the time cost from increased engagement (as a result of our proposals for firms to signpost debt advice and money guidance) as the only potential direct cost.
- 147.** However, we would expect consumers' debt position to be managed more sustainably and would be less likely to fall into payment difficulty following being signposted and referred in some cases to money guidance and debt advice services. On average, customers would need to engage less with firms in the future, saving them time in the future. We assume these two effects will cancel each other out. Therefore, we have not quantified any costs to customers.

## Costs to the FCA

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- 148.** We expect the additional costs to the FCA to supervise against our proposals to be minimal. This is because our proposals do not materially increase the costs of supervising our regulations relative to the baseline. There will be some costs associated with our staff fully familiarising themselves with the proposals, but we do not think these costs will be substantial.

## Indirect impacts

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- 149.** Any increased compliance costs will increase firms' operating costs. Higher marginal costs may be passed on to customers, who may consequentially face increased prices for products and services. They may also face increases to arrears fees where firms are not constrained by our proposals on fees if firms choose to pass on their higher operating costs in this way. Alternatively, it may mean that the higher costs of supplying credit will lead to the marginal but highest risk customer becoming unprofitable, and therefore fewer customers will be advanced credit. However, we do not think these scenarios are likely, as the compliance costs of our proposals are not significant.
- 150.** There is also a potential risk that, instead of firms letting balances escalate unfairly, firms move to repossession of properties at an earlier stage. Our mortgages rules remain clear that firms must not seek repossession unless all other possible attempts to resolve the position have failed (MCOB 13.3.2AR(6)).
- 151.** We do not believe there would be any material impacts upon competition from our proposals.
- 152.** On 9 December 2022 HM Treasury issued a new Remit Letter which included the requirement for the FCA to 'have regard' to growth and international competitiveness, bearing in mind the upcoming secondary international competitiveness and growth objective, which is currently passing through Parliament at the time of writing. The remit letter notes the Government's commitment to securing better outcomes for all

consumers, including through improved competition in the interests of consumers, and having regard to the needs of different consumers who use or may use financial services.

- 153.** We think the impact of these proposals on the objective new secondary objective is low. However, it is likely our proposals will add to trust and confidence in the markets, in the medium to long term. If consumers experience good treatment from firms when in financial difficulty, they are more likely to trust financial services in the future. Improved trust and confidence in financial services from consumers, particularly those that are most vulnerable, encourages take-up of appropriate financial services products and services, which helps underpin medium to long term economic growth and the international competitiveness of the UK.

## Benefits

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### Customers

- 154.** Our proposals will lead to benefits to customers who find themselves in payment difficulty. These benefits include:
- Lower overall costs from interest, fees, and charges (including consumer credit fees, for which cost savings are quantified)
  - Lower time costs, as we would expect customers to need to speak to firms less if debt problems are resolved quickly in sustainable and appropriate ways
  - Reduced impact on credit files which could affect customers' ability to get new (and cheaper) credit products once they are out of financial difficulty
  - In the longer term, customers resolving their debt problems faster and more sustainably will be able to access credit again at better terms
- 155.** We are not able to estimate some of these benefits as it is not reasonably practical to do so. Firms need to review their current practices and, in the light of our proposals, will need to change them if needed. These changes will be firm specific, and may be dependent on how they have already complied with the TSG. In addition, where firms change their approach, it is not completely foreseeable to know how customers' behaviour will change. For example, we do not exactly know the extent to which our proposals will prompt consumers to access more debt advice. We know that debt advice is beneficial to consumers, but it is not possible to accurately estimate the size of the benefit likely to arise.
- 156.** However, some benefits can be estimated. We have already set out the fee savings customers will benefit from. In addition, we estimate the wellbeing benefits to customers who benefit from our proposals on escalating balances below.

### Wellbeing effects from limited balances escalation

- 157.** Given our proposed requirement for firms to consider the effect of an escalating balance, we expect there to be customer benefits as they may pay less interest. This may help prevent a worsening debt position, which may have previously occurred

without this proposal. There is evidence to suggest that consumer wellbeing can be impacted by the outstanding amount of debt. Therefore, minimising debt escalation will likely increase the wellbeing of consumers.

- 158.** We use research by Simetrica Jacobs on 'The Wellbeing Effect of Debt and Debt-Related Factors' (2020) to estimate this wellbeing effect. This research found a statistically significant association between being in arrears on debt payments and a large decrease in subjective wellbeing.
- 159.** To estimate the number of retail lending accounts which had an escalating balance, we compared the balances on accounts in arrears on April 1 2021 to April 1 2022. Credit Reference Agency (CRA) data, which is a 10% sample of all consumers in the CRA's datasets, shows there were 10,700 accounts where balances increased over the year. This would imply there are 107,000 accounts in the UK where escalating balances were a potential issue. We use a subsection of these accounts where the balance has increased by more than 5%. This gives us an estimate of 47,000 accounts where escalating balances may be a concern.
- 160.** We use the Three-Stage wellbeing valuation method to estimate the effect of reducing total arrears-debt on wellbeing in monetary terms. The three stages of the approach applied to the present application are broadly as follows:
- Derivation of a causal estimate of the impact of income on life satisfaction. We use the income coefficient derived in Fujiwara (2013) and the life satisfaction estimate for arrears debt (-0.0578) in our modelling.
  - Estimation of a multivariate regression, controlling for the key determinants of subjective wellbeing as well as any domain-relevant controls, to derive the impact of debt and debt-related factors on life satisfaction.
  - Calculation of the compensating surplus - using estimates from steps 1 and 2 – consisting of the amount of money that leaves an individual at their initial level of wellbeing following a change in debt.
- 161.** We have taken the estimates from Stage 1 and used this to calculate the wellbeing change value between 1 and 10, using equation 2 from the Simetrica Jacobs paper. This value is dependent on the types of debt the intervention addresses and that the percentage change in debt is pre and post-intervention. We do not have arrears data at the individual level which would have enabled us to estimate the increase in arrears arising from an escalating balance. Therefore, we have estimated the benefits to consumers by using a range for the level of arrears for consumers with escalating balances.
- 162.** The range for pre-intervention arrears debt is between £6,700 and £11,700. In both cases we assume the debt reduces by approximately £1,700 following intervention. Using information from the CRA datasets, this is the average balance increase for accounts where escalating balances are a potential issue. The smaller the overall level of arrears, the greater the benefit to customers from each £1 reduction in arrears.
- 163.** We estimate the wellbeing change from our intervention is between 0.0088 and 0.0165. We then used the HM Treasury Green Book Wellby approach to monetise this wellbeing impact, which states to multiply the wellbeing effect by £13,000 (with a range between £10,000 and £16,000).

- 164. The monetary value of the wellbeing impact for one year is between £121 and £226 per account.
- 165. Across all 47,000 accounts where we believe escalating balances are a potential issue, this results in a total benefit between £5.7m and £10.7m.

### Distributional analysis

- 166. We have looked at how our interventions, which are targeted primarily at those in financial difficulty, affect certain groups - many of whom are likely to have characteristics of vulnerability. Therefore, these customers will benefit more from our interventions compared with the general population.
- 167. However, there may be spill over effects to other customers, as firms improve their practices and offer better help to customers, prior to them missing any payments.
- 168. As described above, there will also be a transfer from firms to customers which would affect all customers who are charged fees by credit firms. It is likely this will mostly affect those in financial difficulty but may also affect other customers who would experience lower fees (should they be charged) but are not in financial difficulty.

### Break-even analysis

- 169. We have used break-even analysis to help contextualise the quantified costs above. This helps to test proportionality by examining the likelihood that the benefits will be large enough for the policy to be net beneficial.
- 170. To estimate the number of customers impacted over 10 years, we have used CRA data on customers who have missed a payment on regulated products for the years 2018-2021. This data allows us to estimate how many new customers fell into arrears in each year, relative to previous years. Table 4 shows how many new customers enter arrears who did not have arrears in the previous period. The numbers in years 1-4 are taken from the data. We have then assumed the number of new customers entering arrears is half of this in year 5, and half again in the next year. If we focus on the first 4 years, this gives us an estimate of 10 million customers benefitted. If we use the full 10-year period, then we estimate around 12 million customers benefitted. Therefore, we estimate a range of 10-12m customers who will benefit from our proposals over 10 years.

**Table 4: Stock and flow of consumers in arrears**

Year	Number of customers, m
1	4.5
2	2.3
3	1.6
4	1.4
5	0.7
6	0.3

Year	Number of customers, m
7	0.3
8	0.3
9	0.3
10	0.3

- 171.** For the policy to breakeven, each customer in arrears would on average need to receive additional benefits of between £6 and £8, depending on number of customers impacted, assuming a 10-year appraisal period.

## Annex 3

# Compatibility statement

## Compliance with legal requirements

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1. This Annex records the FCA's compliance with a number of legal requirements applicable to the proposals in this consultation, including an explanation of the FCA's reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).
2. When consulting on new rules, the FCA is required by section 138I(2)(d) FSMA to include an explanation of why it believes making the proposed rules is (a) compatible with its general duty, under s. 1B(1) FSMA, so far as reasonably possible, to act in a way which is compatible with its strategic objective and advances one or more of its operational objectives, and (b) its general duty under s. 1B(5)(a) FSMA to have regard to the regulatory principles in s. 3B FSMA. The FCA is also required by s. 138K(2) FSMA to state its opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
3. This Annex also sets out the FCA's view of how the proposed rules are compatible with the duty on the FCA to discharge its general functions (which include rule-making) in a way which promotes effective competition in the interests of consumers (s. 1B(4)). This duty applies in so far as promoting competition is compatible with advancing the FCA's consumer protection and/or integrity objectives.
4. In addition, this Annex explains how we have considered the recommendations made by the Treasury under s. 1JA FSMA about aspects of the economic policy of His Majesty's Government to which we should have regard in connection with our general duties.
5. Under the Legislative and Regulatory Reform Act 2006 (LRRRA) the FCA is subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). This Annex sets out how we have complied with requirements under the LRRRA.

## The FCA's objectives and regulatory principles: Compatibility statement

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6. The proposals set out in this consultation are primarily intended to advance the FCA's operational objective of protecting consumers.
7. In this consultation we set out that our proposals will help reduce and prevent harm to consumers who are in or at risk of payment difficulties by ensuring they are provided with

appropriate support. The FCA has in this consultation had regard to the 8 matters listed in s. 1C(2)(a)-(h) FSMA on consumer protection, in particular the general principle that those providing regulated financial services should be expected to provide consumers with a level of care that is appropriate ((e)).

8. We consider these proposals are compatible with the FCA's strategic objective of ensuring that the relevant markets function well because they help to provide a stronger framework for firms to better support those consumers facing payment difficulties. For the purposes of the FCA's strategic objective, "relevant markets" are defined by s. 1F FSMA.
9. In preparing the proposals set out in this consultation, the FCA has had regard to the regulatory principles set out in s. 3B FSMA. The relevant regulatory principles are considered below.

### **The need to use our resources in the most efficient and economic way**

10. We have carefully considered the proportionality of our proposed interventions. Our proposals seek to reduce and prevent harm to consumers who are in or at risk of payment difficulties by requiring firms to provide appropriate support. The consequences of these customers not receiving appropriate support can have a significant impact on those individuals, but receiving tailored and timely support to address their payment difficulties can make a real difference to them while also potentially benefiting firms.

Firms have not reported a disproportionate burden from the expectations currently set out in the TSG, which these proposals build on. We consider that the proposals will positively impact the level and consistency of support consumers receive without significantly impacting firms' operations.

### **The principle that a burden or restriction should be proportionate to the benefits**

11. We have carefully considered the proportionality of our proposed interventions. We have identified and, where possible, quantified the costs likely to result from our proposals. We consider that the costs are proportionate given the expected benefits that we have identified and, where possible quantified, as set out in Annex 2: Cost Benefit Analysis (CBA). Our proposals seek to reduce and prevent harm to consumers who are in or at risk of payment difficulties by ensuring they are provided with appropriate support.

### **The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term**

12. We have had regard to this principle and believe our proposals are compatible with it. We discuss this further at paragraph 153 in the CBA.

### **The general principle that consumers should take responsibility for their decisions**

13. Our proposals set out our expectations around the provision of information to enable customers to make better informed choices, but they do not remove the responsibility of consumers.

### **The responsibilities of senior management**

14. Senior managers will need to ensure compliance with our new proposed rules in the same ways as they do for other rules in our Handbook and guidance under our Principles.

### **The desirability of recognising differences in the nature of, and objectives of, businesses carried on by different persons including mutual societies and other kinds of business organisation**

15. We recognise that these markets contain firms with different capabilities and business models. Our proposals are intended to improve consistency in the provision of appropriate support for customers in financial difficulty while providing sufficient flexibility in how firms achieve this.

### **The desirability of publishing information relating to persons subject to requirements imposed under FSMA, or requiring them to publish information**

16. We have had regard to this principle and believe our proposals are compatible with it.

### **The principle that we should exercise of our functions as transparently as possible**

17. In June 2022, we sent a Dear CEO letter in which we committed to consulting on the future of the TSG. This Consultation Paper sets our proposals on incorporating the TSG into the Handbook, as well as some additional proposals which will further benefit customers in financial difficulty. It delivers on the commitment set out in the Dear CEO letter, and provides an opportunity for stakeholders to provide feedback on our proposals.
18. In formulating these proposals, the FCA has had regard to the importance of taking action intended to minimise the extent to which it is possible for a business carried on (i) by an authorised person or a recognised investment exchange; or (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime (as required by s. 1B(5)(b) FSMA). We do not consider that this is relevant to our proposed guidance.

## **Expected effect on mutual societies**

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19. The FCA does not expect the proposals in this paper to have a significantly different impact on mutual societies.

## **Compatibility with the duty to promote effective competition in the interests of consumers**

---

20. In preparing the proposals as set out in this consultation, we have had regard to the FCA's duty to promote effective competition in the interests of consumers. We do not expect that our proposals will directly lead to increased competition across the market. They aim to ensure customers in financial difficulty consistently receive appropriate

support, and to help customers better access and assess information about their options when experiencing payment difficulties. We believe that this would not be inconsistent with promoting effective competition.

## Equality and diversity

---

- 21.** We are required under the Equality Act 2010 in exercising our functions to 'have due regard' to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Act, advance equality of opportunity between persons who share a relevant protected characteristic and those who do not, to and foster good relations between people who share a protected characteristic and those who do not.
- 22.** As part of this, we ensure the equality and diversity implications of any new policy proposals are considered. The outcome of our consideration in relation to these matters in this case is stated in paragraph 2.8 of the Consultation Paper.

## Legislative and Regulatory Reform Act 2006 (LRRRA)

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- 23.** We have had regard to the principles in the LRRRA for the parts of the proposals that consist of general policies, principles or guidance and consider that our proposals are:
- Transparent: As set out above
  - Accountable: We are consulting on these changes and will publish our final rules after considering all feedback received
  - Proportionate: As set out in the CBA
  - Consistent: Our proposals will apply in a consistent manner to all credit and mortgage firms providing support to customers in financial difficulty
  - Targeted only at cases in which action is needed: Our proposals are targeted at supporting customers in financial difficulty
- 24.** We have had regard to the Regulators' Code for the parts of the proposals that consist of general policies, principles or guidance. We consider that the proposals will be effective in helping firms understand and meet regulatory requirements more easily and ensure greater consistency in firm practice, in a manner that leads to improved outcomes for customers in financial difficulty.

## Annex 4

# Abbreviations used in this paper

<b>Abbreviation</b>	<b>Description</b>
<b>APR</b>	Annual Percentage Rate
<b>BiFD</b>	Borrowers in Financial Difficulty
<b>CBA</b>	Cost Benefit Analysis
<b>CEO</b>	Chief Executive Officer
<b>CONC</b>	The Consumer Credit Sourcebook of the FCA Handbook
<b>CP</b>	Consultation Paper
<b>CPA</b>	Continuous Payment Authority
<b>CRA</b>	Credit Reference Agency
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>HMT</b>	His Majesty's Treasury
<b>LRRA</b>	Legislative and Regulatory Reform Act
<b>OFG</b>	Overdrafts Finalised Guidance
<b>MCD</b>	Mortgage Credit Directive
<b>MCOB</b>	The Mortgage Conduct of Business Sourcebook of the FCA Handbook
<b>P2P</b>	Peer to Peer
<b>PCA</b>	Personal Current Account
<b>TSG</b>	Tailored Support Guidance
<b>VCG</b>	Vulnerable Customer Guidance

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## Appendix 1

# Draft Handbook text

## CONSUMER CREDIT AND MORTGAGES (TAILORED SUPPORT) INSTRUMENT 2023

### Powers exercised

- A. The Financial Conduct Authority (“the FCA”) 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 137A (General rule-making power);
  - (2) section 137T (General supplementary powers); and
  - (3) section 139A (Power of the FCA to give guidance).
- B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

### Commencement

- C. This instrument comes into force on [*date*].

### Amendments to the Handbook

- D. The Consumer Credit sourcebook (CONC) is amended in accordance with Annex A to this instrument.
- E. The Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) is amended in accordance with Annex B to this instrument.

### Notes

- F. In the Annexes to this instrument, the “notes” (indicated by “**Note:**” or “*Editor’s note:*”) are included for the convenience of readers, but do not form part of the legislative text.

### Citation

- G. This instrument may be cited as the Consumer Credit and Mortgages (Tailored Support) Instrument 2023.

By order of the Board  
[*date*]

**Annex A**

**Amendments to the Consumer Credit sourcebook (CONC)**

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

**1 Application and purpose and guidance on financial difficulties**

**1.1 Application and purpose**

...

The Principles for Businesses: a reminder

1.1.4 G The Principles for Businesses (*PRIN*) apply as a whole to *firms* with respect to *credit-related regulated activities* and *ancillary activities* in relation to *credit-related regulated activities* (see *PRIN* 3). In carrying on their activities, *firms* should pay particular attention to their obligations under:

...

(7) *Principle 10* (a *firm* must arrange adequate protection for clients’ assets when it is responsible for them); ~~and~~

(8) *Principle 11* (a *firm* must deal with its regulators in an open and cooperative way, and must disclosure to the *appropriate regulator* appropriately anything relating to the *firm* of which that regulator would reasonably expect notice); and

(9) *Principle 12* (a *firm* must act to deliver good outcomes for *retail customers*), including *PRIN 2A*.

...

**5 Responsible lending**

...

**5.2A Creditworthiness assessment**

...

Scope, extent and proportionality of assessment

...

5.2A.22 G ...

...

- (2) the *customer* is ~~particularly~~ vulnerable, for example because the *customer* has mental health difficulties or mental capacity limitations (see *CONC 2.10* and *CONC 7.2*).

...

**5.5A Creditworthiness assessment: P2P agreements**

...

Scope, extent and proportionality of assessment

...

5.5A.23 G ...

...

- (2) the *borrower* is ~~particularly~~ vulnerable, for example because the *borrower* has mental health difficulties or mental capacity limitations (see *CONC 2.10* and *CONC 7.2*).

...

**5D Overdraft repeat use**

**5D.1 Purpose and application**

Purpose

5D.1.1 R ...

(2) ...

(3) Relevant information held by the *firm* includes:

- (a) information from the *customer's* personal current account; and
- (b) information provided by the *customer*.

(4) In (3)(a):

- (a) the personal current account is the personal current account in respect of which the overdraft is provided;
- (b) information from the *customer's* personal current account may include, but is not limited to:
  - (i) a significant reduction in income into the account,
  - (ii) new period payments being set up to repay new borrowing commitments, where the level of payments

may suggest that the customer is at risk of financial hardship.

**5D.1.1A** G A customer is likely to experience financial hardship if they are unable to pay priority debts or living expenses.

...

Who and what?

- 5D.1.3 R ...
- (2) ...
- (3) To the extent a rule in this chapter does not already apply to TP firms as a result of GEN 2.2.26R, it applies to them so far as the rule would have applied were it in effect before IP completion day.
- (4) To the extent a rule in this chapter does not already apply to Gibraltar-based firms as a result of GEN 2.3.1R, it applies to them so far as the rule would have applied were it in effect before IP completion day.

...

**5D.2 Obligation to identify and monitor repeat use of overdrafts**

- 5D 2.1 R ...
- ...
- (2) identify as early as possible, by reference to an appropriate collection of factors that take account of any relevant information held by the firm, any *customers* in respect of whom there is a pattern of repeat use, and then sub-divide those *customers* into the following two categories:

...

...

**5D.3 Interventions to be taken in the case of repeat users**

...

- 5D.3.2 R ...
- (2) The *firm* must promptly communicate with the *customer* in an appropriate medium (taking into account any preferences expressed by the *customer* about the medium of communication between the *firm* and the *customer*) highlighting the *customer's* pattern of overdraft use and indicating that the *customer* should consider

whether it is resulting or may result in high avoidable costs. The *firm* must encourage the *customer* to contact the *firm* to discuss their situation and explain that doing nothing could make things worse. ~~The *firm* must also provide contact details for not for profit debt advice bodies.~~

...

(5) ~~If appropriate, in light of the information gathered under (4), the~~ The *firm* must:

- (a) promptly identify and set out suitable options, in light of all relevant information held by the *firm* (including the information gathered under (4)), designed to help the *customer*:
  - (i) help the *customer* to reduce their overdraft use over a reasonable period of time; and
  - (ii) provide the support required to address their actual or potential financial difficulties,

in such a way that does not adversely affect the *customer's* financial situation; and

(b) explain to the *customer* that, if the *customer* fails to engage in the discussion or fails to take appropriate action to address the situation, one of the possible consequences is that the *firm* may need to consider the suspension or removal of the overdraft facility or a reduction in the credit limit.

...

(7) ~~Sub-paragraph (6) does~~ Sub-paragraphs (5A) and (6) do not apply if the suspension or removal of the overdraft facility or a reduction in the credit limit would cause financial hardship to the *customer*.

...

5D.3.3 G (1) ...

(1A) When a *firm* identifies that CONC 5D.3.2R(1)(a) and (b) apply to a *customer*, it should:

- (a) promptly take the action specified in CONC 7.3.7AG(1)(a) to (b) (provision of information to the *customer*); and
- (b) where appropriate to the *customer's* circumstances, follow the guidance set out in CONC 7.3.7G(2) to (6) (further communication with the *customer*).

...

- (4) Options that a *firm* could identify for the purposes of *CONC* 5D.3.2R(5)(a) may include, when assessed as appropriate for the *customer*:
- ...
- (b) ~~providing contact details for *not for profit debt advice bodies* and other relevant bodies (for example, one providing advice on budgeting or money management), and encouraging the *customer* to contact one of them; [deleted]~~
  - (c) ~~the provision by the *firm* to the *customer* of alternative *credit* on more favourable terms (for example a fixed sum loan repayable by instalments), provided that, if this would be accompanied by suspension or removal of an existing *credit* facility, this would not cause financial hardship to the *customer*; [deleted]~~
  - (d) ~~forbearance, such as reducing or waiving interest and other charges or (where applicable) allowing additional time to pay, where this does not unduly delay further help to the *customer* or permit further deterioration of the *customer's* financial position; or and other support, including doing one or more of the following:~~
    - (i) ~~reducing or waiving interest and other charges or (where applicable) allowing additional time to pay, where this does not unduly delay further help to the *customer*, or permit further deterioration of the *customer's* financial position;~~
    - (ii) ~~transferring the overdraft debt to an alternative *credit agreement* on more favourable terms (refinancing) provided that this would not cause financial hardship to the *customer*; or~~
    - (iii) ~~agreeing staged reductions in the overdraft limit and balance (agreeing a repayment plan).~~
- ...
- ...
- (6) ...
- (7) A *firm* should set out on its website, in a prominent location, the forbearance and other support options that may be considered in accordance with *CONC* 5D.3.3G. Where a *firm* offers refinance loans as one of these options, it should provide an indication of the eligibility criteria, interest rate and term.

- 5D.3.4 R Where a *firm* identifies a forbearance or other support option under *CONC 5D3.3G(4)(d)*, the *firm* must take all reasonable steps to ensure that any measure agreed with the *customer* is sustainable.
- 5D.3.5 G (1) A measure is unlikely to be sustainable if it has the result that the *customer* cannot meet their priority debts and essential living expenses.
- (2) Priority debts and essential living expenses include payments for mortgage, rent, council tax, food and utility bills.
- 5D.3.6 R A *firm* must take reasonable steps to ensure that any measure remains appropriate.
- 5D.3.7 G What is reasonable in any given case will depend on the *customer's* circumstances and the nature of the measure provided, but is likely to include reviewing the terms of the measure at appropriate intervals and responding as necessary. It will also involve reacting appropriately to any relevant information the *firm* is otherwise made aware of, such as correspondence from a debt adviser.
- 5D.3.8 R Where a *firm* assesses income and expenditure, it must do so in an objective manner.
- 5D.3.9 G When complying with *CONC 5D.3.8R*:
- (1) the assessment should be informed by sufficiently detailed information; and
- (2) a *firm* may have regard to the spending guidelines in the Standard Financial Statement.
- 5D.3.10 G A *firm* should have clear written policies setting out how and in what circumstances it conducts income and expenditure assessments.

#### Information provided to customers

- 5D.3.11 G When a *firm* identifies that *CONC 5D.3.2R(1)(a)* and (b) apply to a *customer*:
- (1) when engaging with *customers*, *firms* are reminded of their obligations to communicate with *customers* in accordance with *Principle 12* and *PRIN 2A*, or *Principle 7*, as applicable;
- (2) a *firm* should make available to *customers* timely, clear and understandable information which:
- (a) takes into account the individual characteristics of the *customer*; and
- (b) is sufficient to enable the *customer* to understand their financial position in relation to their debt, including the

potential impact of any forbearance or other support on their overall balance and any implications for the *customer's* credit file.

(3) A *firm* should consider the most appropriate way to engage and communicate with a *customer*, and offer to engage through a range of channels, changing the channel if necessary to enable the *customer* to engage with the *firm* effectively.

...

**6 Post contractual requirements**

...

**6.7 Post contract: business practices**

...

Credit cards and retail revolving credit: persistent debt

...

6.7.36 G Where a *firm* suspends or cancels the *customer's* use of the credit card or *retail revolving credit* facility under *CONC* 6.7.35R the *firm* is not, unless the *customer* responds to the *firm's* request under *CONC* 6.7.31R(3), required to take further steps under *CONC* 6.7.37R to *CONC* 6.7.39R. *Firms* are however reminded of *CONC* 6.7.3AR, which requires *firms* to take appropriate action where there are signs of actual or possible financial difficulties, and *CONC* 7.3.4R, which requires *firms* to treat *customers* in or approaching arrears or in default ~~or arrears difficulties~~ with forbearance and due consideration.

...

6.7.40 G ...

...

(2) treat *customers* in or approaching arrears or in default ~~or arrears difficulties~~ with forbearance and due consideration under *CONC* 7.3.4R,

...

...

**7 Arrears, default and recovery (including repossessions)**

**7.1 Application**

Who? What?

- 7.1.1 R ...
- 7.1.1A R (1) To the extent a *rule* in this chapter does not already apply to *TP firms* as a result of *GEN 2.2.26R*, it applies to them so far as the *rule* would have applied were it in effect before *IP completion day*.
- (2) To the extent a *rule* in this chapter does not already apply to *Gibraltar-based firms* as a result of *GEN 2.3.1R*, it applies to them so far as the *rule* would have applied were it in effect before *IP completion day*.
- ...
- 7.2 Clear effective and appropriate arrears policies and procedures in respect of customers in or approaching arrears or in default**
- Arrears and default policies
- 7.2.1 R A *firm* must establish and implement clear, effective and appropriate policies and procedures for:
- (1) dealing with *customers* whose accounts fall into arrears who are in or approaching arrears or in default;  
 [Note: paragraph 7.2 of *ILG*]
- (2) the fair and appropriate treatment of *customers*, who the *firm* understands or reasonably suspects to be particularly vulnerable.  
 [Note: paragraphs 7.2 and 7.2 (box) of *ILG* and 2.2 (box) of *DCG*]
- 7.2.2 G *Customers* who have mental health difficulties or mental capacity limitations may fall into the category of particularly vulnerable *customers*.  
 [Note: paragraph 2.2 (box) of *DCG*]
- 7.2.2A G In developing policies and procedures in accordance with *CONC 7.2*, a *firm* should have regard to the *FCA's* Guidance for firms on the fair treatment of vulnerable *customers* (FG21/1) (<https://www.fca.org.uk/publication/finalised-guidance/fg21-1.pdf>).
- 7.2.3 G ...
- 7.2.4 R A *firm* must ensure that the effectiveness of any policies and procedures put in place further to *CONC 7.2.1R*, and the *firm's* compliance with them, is reviewed at appropriate intervals.
- 7.2.5 G In order to comply with its obligations under *CONC 7.2*, a *firm* should ensure that the review required by *CONC 7.2.4R* includes consideration of the full extent of support provided to some customers under this chapter, and does not only assess individual *customer* interactions in isolation.

### 7.3 Treatment of customers in or approaching arrears or in default ~~or arrears~~ (including repossessions): lenders, owners and debt collectors

...

Dealing fairly with customers in or approaching arrears or in default

- 7.3.2 G When dealing with *customers* in or approaching arrears or in default ~~or in arrears difficulties~~ a *firm* should pay due regard to its obligations under Principle 12 (Consumer Duty) and PRIN 2A, or Principle 6 (Customers' interests) ~~to treat its *customers* fairly~~, as applicable.

[Note: paragraphs 7.12 of *ILG* and 2.2 of *DGC*]

Forbearance and due consideration

- ~~7.3.2A~~ R ~~CONC 7.3.3G to CONC 7.3.6G and CONC 7.3.8G do not apply to the extent that the *firm* follows:~~

- (1) ~~the guidance entitled Credit cards (including retail revolving credit) and coronavirus: Payment Deferral Guidance, the guidance entitled Personal loans and coronavirus: Payment Deferral Guidance, the guidance entitled Motor finance agreements and coronavirus: Payment Deferral Guidance, the guidance entitled High cost short-term credit and coronavirus: Payment Deferral Guidance or the guidance entitled Rent to own, buy now pay later and pawnbroking agreements and coronavirus: Payment Deferral Guidance; or~~
- (2) ~~the part of the guidance entitled Coronavirus and customers in temporary financial difficulty: updated guidance for insurance and premium finance firms under the heading Payment Deferrals~~

~~except, in each case, where the guidance indicates that the *firm* should act in accordance with those *rules or guidance*: [deleted]~~

- 7.3.3 G Where a *customer* under a *regulated credit agreement* fails to make an occasional payment when it becomes due, a *firm* should, in accordance with Principle 12 and PRIN 2A, or Principle 6, as applicable, allow for such unmade payments to be made within the original term of the agreement unless:

...

- 7.3.4 R A *firm* must treat *customers* in or approaching arrears or in default ~~or in arrears difficulties~~ with forbearance and due consideration.

[Note: paragraphs 7.3 and 7.4 of *ILG* and 2.2 of *DCG*]

- 7.3.4A G A *firm* should regard a *customer* as approaching arrears when the *customer* indicates to the *firm* that they are at risk of not meeting one or more repayments when they fall due.

- 7.3.4B     R     When determining appropriate forbearance and treating the *customer* with due consideration, a *firm* must take into account the individual circumstances of the *customer* of which the *firm* is or should be aware.
- 7.3.5     G     Examples of treating a *customer* with forbearance and due consideration would include the *firm* doing one or more of the following, as may be ~~relevant~~ appropriate to the *customer* in the circumstances:
- (1)     ~~considering~~ suspending, reducing, waiving or cancelling any further interest or charges (for example, when a *customer* provides evidence of financial difficulties and is unable to meet *repayments* as they fall due or is only able to make token *repayments*, where in either case the level of debt would continue to rise if interest and charges continue to be applied);
- [**Note:** paragraph 7.4 (box) of *ILG*]
- ...
- (3)     ~~accepting no payments, reduced payments or token payments for a reasonable period of time in order to allow a *customer* to recover from an unexpected income shock, from a *customer* who demonstrates that meeting the *customer's* existing debts would mean not being able to meet the *customer's* priority debts or other essential living expenses (such as in relation to a mortgage, rent, council tax, food bills and utility bills).~~
- (4)     agreeing a repayment arrangement with the *customer* that allows the *customer* a reasonable period of time to repay the debt;
- (5)     transferring the debt to an alternative *credit agreement* (refinancing) to help the *customer* reduce the debt over a reasonable period of time in such a way that does not adversely affect the *customer's* financial situation.
- (6)     In relation to a *firm* that takes any article in *pawn* under a *regulated credit agreement*:
- (a)     where the redemption period has not ended, extending the redemption period; or
- (b)     where the redemption period has ended, refraining from giving the *customer* notice of intention to sell an item of *pawn* for a reasonable further period, or if notice of intention to sell has been given, suspending the sale for a reasonable further period.
- (7)     A *firm* should only take the steps in *CONC 7.3.5G(6)* where it is in the *customer's* interests. In considering whether it is in the *customer's* interests, a *firm* should consider the realistic prospects of a *customer* recovering the item of *pawn* and the equity in the item.

- 7.3.5A     G     The provisions in *CONC* 7.3.5G are not exhaustive.
- 7.3.5B     R     A *firm* must take all reasonable steps to ensure that any repayment arrangements agreed with *customers* (see *CONC* 7.3.5G(4)) are sustainable.
- 7.3.5C     G     (1)     A repayment arrangement is unlikely to be sustainable if it has the result that the *customer* cannot meet their priority debts and essential living expenses.
- (2)     Priority debts and essential living expenses include payments for mortgage, rent, council tax, food and utility bills.
- 7.3.5D     R     Where a *firm* assesses income and expenditure, it must do so in an objective manner.
- 7.3.5E     G     When complying with *CONC* 7.3.5DR,
- (1)     the assessment should be informed by sufficiently detailed information; and
- (2)     a *firm* may have regard to the spending guidelines in the Standard Financial Statement.
- 7.3.5F     G     A *firm* should have clear written policies setting out how and in what circumstances it conducts income and expenditure assessments.
- 7.3.5G     R     (1)     This rule applies where:
- (a)     a *firm* has put in place a repayment arrangement as a forbearance measure; and
- (b)     the *customer* is meeting the terms of that arrangement.
- (2)     The *firm* must suspend, reduce, waive or cancel any further interest or charges to the extent necessary to ensure that the level of debt under the arrangement does not rise for the period of that arrangement.
- 7.3.5H     G     The extent to which the *firm* is required to suspend, reduce, waive or cancel any further interest or charges may vary over the term of the arrangement. If a *customer's* circumstances change so that they can pay larger amounts under the repayment arrangement, the *firm* will not be required to waive as much interest, fees or charges to prevent the balance from escalating.
- 7.3.5I     R     A *firm* must take reasonable steps to ensure that any forbearance or due consideration provided remains appropriate.
- 7.3.5J     G     What is reasonable in any given case will depend on the *customer's* circumstances and the nature of the forbearance or due consideration provided, but is likely to include reviews at appropriate intervals and responding as necessary. It will also involve reacting appropriately to any

relevant information the *firm* is otherwise made aware of, such as correspondence from a debt adviser.

...

- 7.3.7A G (1) If a *customer* is in or approaching arrears or in default ~~or in arrears difficulties~~, the *firm* should, where appropriate:
- (a) inform the *customer* that free and impartial money guidance and debt advice is available from *not-for-profit debt advice bodies* and can be accessed through a range of delivery channels including digital tools; and
  - (aa) effectively communicate to the *customer* the potential benefits of accessing money guidance or free and impartial debt advice from *not-for-profit debt advice bodies*;
  - (b) refer the *customer* to a *not-for-profit debt advice body*.

...

- (3) ...
- (4) A *firm* should make available to the *customer* a record of any income and expenditure assessment that the *firm* has made to enable the *customer* to share the record with other lenders and debt advice providers.
- (5) A *firm* should consider whether the *customer* would benefit from a specialist source of debt advice. For example, a self-employed *customer* may benefit from being made aware of business debt advice providers.
- (6) When considering how to provide appropriate help and support to *customers*, a *firm* may have regard to the Money and Pensions Service Strategic toolkit for creditors.

- 7.3.8 G An example of where a *firm* is likely to contravene *Principle 12* and *PRIN 2A*, or *Principle 6*, as applicable, and *CONC 7.3.4 R* is where the *firm* does not allow for alternative, affordable payment amounts to repay the debt due in full, where the *customer* is in or approaching arrears or in default ~~or arrears difficulties~~ and the *customer* makes a reasonable proposal for repaying the debt or a *debt counsellor* or another person acting on the *customer's* behalf makes such a proposal.

[**Note:** paragraphs 7.16 of *ILG* and 3.7j of *DCG*]

...

- 7.3.10A G (1) An example of behaviour by or on behalf of a *firm* which is likely to contravene *CONC 7.3.10R* and *Principle 12* and *PRIN 2A*, or *Principle 6*, as applicable, is pressurising a *customer* to raise funds to

repay a debt by arranging the receipt of a lump sum from the ~~customer's~~ customer's pension scheme.

...

...

7.3.13 G ...

Information provided to customers

7.3.13A G (1) When engaging with customers in or approaching arrears or in default, firms are reminded of their obligations to communicate with customers in accordance with Principle 12 and PRIN 2A, or Principle 7, as applicable.

(2) A firm should make available to customers in or approaching arrears or in default, timely, clear and understandable information which:

(a) takes into account the individual characteristics of the customer; and

(b) is sufficient to enable the customer to understand their financial position in relation to their debt, including the potential impact of any forbearance or due consideration on their overall balance and any implications for the customer's credit file.

(3) A firm should consider the most appropriate way to engage and communicate with a customer, and offer to engage through a range of channels, changing the channel if necessary to enable the customer to engage with the firm effectively.

...

Enforcement of debts

...

7.3.17 R A firm must not take steps to repossess a customer's home, goods or vehicles other than as a last resort, having explored all other possible options.

[Note: paragraphs 7.14 of ILG and 3.7t of DCG]

7.3.17A R A firm must not commence or continue repossession action where a forbearance arrangement is in place for as long as the customer is meeting the terms of that arrangement.

7.3.18 R A firm must not threaten to commence court action, including an application for a charging order or (in Scotland) an inhibition or an order for sale, in order to pressurise a customer in or approaching arrears or in default ~~or arrears difficulties~~ to pay more than they can reasonably afford.

[**Note:** paragraphs 7.14 of *ILG* and 3.7i (box) of *DCG*]

- 7.3.19 G ...
- 7.3.20 G (1) Where a *customer* has informed the *firm* that they intend to access debt help or money guidance, the *firm* should allow the *customer* reasonable time to access it before considering whether to commence repossession action.
- (2) A *firm* may take action to repossess *goods* or *vehicles* as a last resort, for example, when the *firm* has made reasonable attempts to engage with the *customer* and the *customer* has not engaged.
- (3) When considering whether repossession is an appropriate course of action, a *firm* should have regard to all aspects of the financial impact on the *customer*, including asset depreciation if repossession is delayed.
- (4) A *firm* should inform *customers* of the impact of the *firm* suspending any repossession actions, including on the value of *goods* or *vehicles*.
- (5) A *firm* taking or considering taking enforcement action should have regard to the *FCA*'s Guidance for firms on the fair treatment of vulnerable customers (FG21/1) (<https://www.fca.org.uk/publication/finalised-guidance/fg21-1.pdf>).
- 7.3.21 G Where it may be in the *customer*'s interests to exercise their right to terminate a *hire purchase agreement* or *conditional sale agreement* under section 99 or section 100 of the *CCA*, a *firm* should make the *customer* aware of that right in good time, providing the information in a way that is clear, fair and not misleading to help the *customer* decide how to proceed.
- 7.3.22 G Where a *customer* intends to exercise their rights under section 99 or section 100 of the *CCA*, a *firm* should consider deferring legal liabilities associated with voluntary termination.

...

## 7.6 Exercise of continuous payment authority

Recovery and continuous payment authorities etc.

...

- 7.6.2A R ...
- (3) A *firm* must not propose that a *customer* should grant a *continuous payment authority*, and must not exercise rights under such an authority, in respect of *repayments* under a *regulated credit agreement* or a *P2P agreement*, the terms of which do not already provide for a *continuous payment authority*, unless:

(a) the *customer* is in or approaching arrears or in default in respect of the agreement; and

...

7.6.2B G (1) Where a *regulated credit agreement* or a *P2P agreement* does not incorporate the terms of a *continuous payment authority*, *CONC 7.6.2AR* enables a *continuous payment authority* to be put in place (for example, for a repayment plan) without necessarily requiring an amendment to the agreement. But *CONC 7.6.2AR* applies only where the *customer* is in or approaching arrears or in default, and the creation of the *continuous payment authority* supports the fair treatment of the *customer* and facilitates the exercise of forbearance (see *CONC 7.3.4R* and *CONC 7.3.5G*).

...

...

**7.7 Application of interest and charges**

...

7.7.5 R ...

7.7.6 G (1) When considering whether any proposed charge is higher than necessary, a *firm* should have regard to the frequency and nature of the events of arrears or default to which the charge relates.

(2) The charges applied to an individual *customer* may represent an average of the total administrative costs relating to events of arrears or default across the *firm's* relevant business over an appropriate period. There is no requirement on a *firm* to calculate the costs that relate to a particular *customer* on an individual basis.

(3) When calculating total administrative costs, a *firm* may use a reasonable estimate.

...

**7.10 Treatment of customers with mental capacity limitations**

...

7.10.4 G *Firms* should note *CONC 7.2.1R* (and its accompanying *guidance*) which requires *firms* to establish and implement policies and procedures for the fair and appropriate treatment of ~~particularly~~ vulnerable *customers*.

...

**App 1 Total charge for credit rules; and certain exemptions**

...

**1.2 Total charge for credit rules for other agreements**

...

Assumptions for calculation

1.2.5 R For the purposes of calculating the *total charge for credit* and the *annual percentage rate of charge*:

...

(l) for the purposes of (k):

(i) ...

(ii) in cases where the capital must be repaid in full, and in cases where the capital may be taken in full by the lender exercising their rights under a *continuous payment authority*, in a single payment, within or after each payment period, successive drawdowns of the *maximum amount* and repayments of the entire capital by the *borrower* shall, where necessary, be assumed to occur over the period of one year;

...

...

...

**Annex B**

**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.

**1 Application and purpose**

...

**1.2 General application: who? what?**

...

Applicability of MCOB to regulated mortgage contracts which had previously been regulated credit agreements

1.2.21 G (1) By virtue of amendments to articles 60B, 60C and 61 of the *Regulated Activities Order* which came into force on 21 March 2016, certain *regulated credit agreements* became *regulated mortgage contracts* (but see the transitional provisions described in (3) below). The provisions of *MCOB* that apply to these *regulated mortgage contracts* include:

...

(c) *MCOB* 13 (~~Arrears, payment shortfalls~~ Payment difficulties and repossessions: regulated mortgage contracts and home purchase plans).

...

...

**1.6 Distinguishing regulated mortgage contracts and regulated credit agreements**

...

1.6.4 R If, notwithstanding the steps taken by a *firm* to comply with *MCOB* 1.6.3R, it transpires that a mortgage which the *firm* has treated as unregulated or as a *regulated credit agreement* is in fact a *regulated mortgage contract*, the *firm* must as soon as practicable after the correct status of the mortgage has been established:

...

(2) apply to the *regulated mortgage contract* all relevant *MCOB* requirements, such as those on disclosure (in *MCOB* 7) or on the treatment of ~~customers in arrears~~ customers who have or may have payment difficulties (in *MCOB* 13).

...

**7 Disclosure at start of contract and after sale**

...

**7.5 Mortgages: statements**

...

7.5.6 G ...

**Annual statement – additional content for customers in arrears payment shortfall**

7.5.8 G If a *firm* chooses to use the annual statement to provide a *customer* with a regular written statement in accordance with *MCOB* 13.5.1R (Statements of

charges), as described in *MCOB* 13.5.2G(4), it will need to include the actual *payment shortfall* in the annual statement.

...

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

Further advances

...

7.7.2 G Where a *customer* remains in breach, for more than one month, of an agreed borrowing limit *MCOB* 7.7 or of an obligation to repay where the *regulated mortgage contract* does not have a regular repayment plan, *firms* are reminded that *MCOB* 13 (~~Arrears~~ Payment difficulties and reposessions) applies.

...

**12 Charges**

...

**12.4 Payment shortfall charges: regulated mortgage contracts**

...

12.4.3 *Firms* are also subject to requirements on information provision and standards relating to ~~arrears~~ payment shortfalls and *reposessions* (see *MCOB* 13 (~~Arrears~~ Payment difficulties and reposessions)).

...

**13 ~~Arrears, payment shortfalls~~ Payment difficulties and reposessions: regulated mortgage contracts and home purchase plans**

**13.1 Application**

Who?

...

13.1.2 G ...

13.1.2A R To the extent a rule in this chapter does not already apply to Gibraltar-based firms as a result of GEN 2.3.1R, it applies to them so far as the rule would have applied were it in effect before IP completion day.

...

**13.2 Purpose**

13.2.1 G This chapter ~~amplifies Principle 6 in respect of the information and service provided to~~ sets out obligations to help ensure that customers who have or may have payment difficulties, or who face a sale shortfall, receive appropriate information and support.

...

### 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~~ or may have payment difficulties in respect of a regulated mortgage contract or home purchase plan;

...

(1A) For the purposes of MCOB 13, a customer has or may have payment difficulties if:

(a) the customer has a payment shortfall;

(b) the customer indicates to the firm that they are at risk of falling into payment shortfall; or

(c) the firm otherwise becomes aware that the customer may be at risk of falling into payment shortfall.

(2) ...

(3) A firm must ensure that the effectiveness of any policies and procedures put in place further to paragraph (2), and the firm's compliance with them, is reviewed at appropriate intervals.

13.3.1A G In the FCA's view, in order to comply with MCOB 13.3.1R, firms should ensure that the review required by paragraph (3) includes consideration of the full extent of support provided to some customers under this chapter, and does not only assess individual customer interactions in isolation.

...

#### 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.~~ In developing procedures and policies to comply with

MCOB 13.3.1CR, a firm should have regard to the FCA’s Guidance for firms on the fair treatment of vulnerable customers (FG21/1) (<https://www.fca.org.uk/publication/finalised-guidance/fg21-1.pdf>).

...

Customers ~~in~~ and payment difficulties: procedures

...

13.3.2A R A firm must, when dealing with any customer ~~in~~ who has or may have payment difficulties:

(1Z where appropriate:  
A)

- (a) inform a customer that free and impartial money guidance and debt advice is available, including from not-for-profit bodies;
- (b) effectively communicate the potential benefits of accessing free and impartial money guidance and debt advice, and the range of channels through which it is available; and
- (c) signpost or refer the customer to suitable sources of free and impartial money guidance or debt advice.

(1) ...

(2) liaise, if the customer makes arrangements for this, with a third party source of advice regarding ~~the~~ any payment shortfall or sale shortfall;

(3) allow a reasonable time over which ~~the~~ any 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;

...

...

13.3.4A R In complying with MCOB 13.3.1R(1) and MCOB 13.3.2AR(6) in respect of customers who have or may have payment difficulties:

(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:

...

- (c) waive or defer payment of capital and/or 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
- (ca) reduce the interest rate being charged to the customer, or apply simple interest instead of compound interest; or
- (d) treat the a 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

...

(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~~ and of not agreeing an arrangement. This information must include the impact on the customer’s overall balance and implications for the customer’s credit file.

(3) a firm must:

- (a) take into account the effect of any potential arrangements on the customer’s overall balance; and
- (b) take reasonable steps to ensure that any arrangements with customers in payment shortfall remain appropriate.

13.3.4A R ...  
A

13.3.4A G What is reasonable in any given case for the purposes of MCOB  
B 13.3.4AR(3)(b) will depend on the customer’s circumstances and the nature of the arrangements, but this is likely to involve reviewing the arrangements at appropriate intervals and responding as necessary. It will also involve reacting appropriately to any relevant information the firm is otherwise made aware of, such as correspondence from a debt adviser.

13.3.4A G A firm should not renew arrangements with a customer on the same basis  
C without considering if this is appropriate.

...

13.3.4C G (1) Firms should note that the list of options to consider as 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.

(2) Firms should take into account that customer circumstances will vary and should therefore:

- (a) ensure they employ a sufficient range of options to help customers;
  - (b) offer to engage with customers through a range of channels, changing the channel if necessary to enable customers to engage with them effectively; and
  - (c) be transparent with customers about the range of options they will consider and the communication channels available. This information should be set out clearly, including in a prominent location on firm websites.
- (3) Firms should take account of a customer's wider indebtedness. Where a customer indicates that they are having difficulty paying other priority debts, firms should consider this and the consequences of the customer falling behind on those debts when considering potential arrangements for a customer.
- (4) Where possible a firm should offer to provide to the customer a record of any income and expenditure assessment that the firm prepared while providing support under this chapter.
- 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. although firms must not automatically capitalise a payment shortfall where the impact would be material, it may be appropriate to agree to capitalise a payment shortfall if:~~
- (1) the firm reasonably considers (taking into account the root cause of the payment shortfall) that the customer can afford the capitalised monthly payments;
  - (2) other options to repay the shortfall more quickly have been considered; and
  - (3) taking account of the customer's individual circumstances, the firm reasonably considers that capitalisation is in accordance with the customer's best interests.

...

#### **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 who has or may have payment difficulties, or 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 (including video calls) between the firm and the customer which discuss any amount in arrears or any amount subject to payment shortfall charges.

...

...

**13.4 Arrears Payment shortfalls: provision of information to the customer of a regulated mortgage contract**

13.4.1 R If a *customer* falls into ~~arrears~~ payment shortfall 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*:

...

13.4.1A R MCOB 13.4.1R does not apply where the *payment shortfall* is created as a result of an inadvertent payment error and the shortfall is cleared within 5 *business days*.

...

13.4.3 G (1) A *firm* may provide the information in MCOB 13.4.1R (2), (3), (4), (5) and (6) orally, for example by telephone, but must (subject to MCOB 13.4.1AR) provide the information in a *durable medium* with a copy of the *MoneyHelper* information sheet “Problems paying your mortgage” within 15 *business days* of becoming aware of the ~~customer's account falling into arrears~~ payment shortfall.

(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*.~~  
[deleted]

**Customers in arrears payment shortfall within the past 12 months**

13.4.4 R If a *customer's* account has previously fallen into ~~arrears~~ payment shortfall within the past 12 months (and at that time the *customer* received the disclosure required by MCOB 13.4.1R), the ~~arrears have~~ payment shortfall has been cleared and the *customer's* account falls into ~~arrears~~ payment shortfall on a subsequent occasion a *firm* must either:

...

(2) provide, as soon as possible, and in any event within 15 *business days* of becoming aware of the further ~~arrears~~ payment shortfall, 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.

13.4.4A R MCOB 13.4.4R does not apply where the subsequent *payment shortfall* is created as a result of an inadvertent payment error and the shortfall is cleared within 5 *business days*.

...

**13.5 Dealing with a customer in ~~arrears~~ payment shortfall 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~~ a *customer* has a *payment shortfall* or *sale shortfall* (whether or not that *shortfall* is attracting charges), a *firm* must provide the *customer* with a regular written statement (at least one a quarter) of the payments due, the actual *payment shortfall*, ~~the charges incurred and the debt and, where relevant, the charges incurred.~~

13.5.2 G (1) ~~For the purpose of MCOB 13.5.1R, charges that trigger the requirement for regular statements include all charges and fees levied directly as a result of the account falling into *arrears* *payment shortfall*. 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.~~

...

...

**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~~ Provision of information to the customer

13.8.1 R ~~If a *customer* falls into *arrears*, a~~ A *firm* must provide the a *customer* who has a *payment shortfall* with adequate information about the *shortfall* *arrears* in a *durable medium*:

...

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*~~ *payment shortfalls* for guidance (see MCOB 13.4 and MCOB 13.5).

...

...

**14 MCD article 3(1)(b) credit agreements**

...

**14.1 Handbook provisions which apply in respect of MCD article 3(1)(b) credit agreements**

...

14.1.3 R Subject to *MCOB* 14.1.5R and *MCOB* 14.1.7R:

(1) *MCD article 3(1)(b) creditors* and *MCD article 3(1)(b) credit intermediaries* must comply with the following provisions in *MCOB*. These provisions apply with such changes as are necessary to apply them to *MCD article 3(1)(b) credit agreements* and activity undertaken in relation to those agreements (see *MCOB* 14.1.4G):

...

(r) *MCOB* 13 (~~arrears, payment difficulties shortfalls~~ and reposessions) except for *MCOB* 13.3.9R;

...

...

14.1.7 R The following provisions do not apply to an *MCD article 3(1)(b) creditor* or *MCD article 3(1)(b) credit intermediary* where the conditions in *CONC* 1.2.10R(2) are fulfilled: *MCOB* 7.5 (mortgages: statements) and *MCOB* 13 (~~arrears, payment difficulties shortfalls~~ and reposessions) (except for *MCOB* 13.3.1AR to *MCOB* 13.3.1BG, *MCOB* 13.3.2AR to *MCOB* 13.3.8G, and *MCOB* 13.6.1R to *MCOB* 13.6.2G, which apply even where those conditions are fulfilled).

...

**15 P2P home finance activities**

...

**15.3 Further provisions about the application of MCOB where agreements are facilitated by a P2P platform**

...

15.3.2 R *MCOB* 13 (~~arrears, payment difficulties shortfalls~~ and reposessions) applies to a *firm* which is a *P2P platform operator* in respect of *regulated mortgage contracts* or *home purchase plans*. It applies as though:

...

**15.4 Modifications**

General modifications

...

15.4.4 R ...

(2) This table belongs to (1).

MCOB provisions	Description
...	
<i>MCOB 13.4.1R</i>	<u>Arrears Payment shortfalls</u> : provision of information to the customer of a regulated mortgage contract
...	
<i>MCOB 13.5.1R</i>	Dealing with a customer in <del>arrears</del> <u>payment shortfall</u> or with a sale shortfall on a regulated mortgage contract: statements of charges
...	

...

**Sch 1 Record keeping requirements**

...

Sch 1.3 G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				

<p><i>MCOB</i> 13.3.9R</p>	<p>Dealings with <i>customers</i> <del>with a</del> <i>payment shortfall</i> <u>who have or may have payment difficulties</u>, or with a <i>sale shortfall</i></p>	<p>Details of all dealings with the <i>customer</i> (including a recording of all telephone conversations <u>(including video calls)</u> which discuss any <i>arrears</i> or any amount subject to <i>payment shortfall</i> charges); 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.</p>	<p>The date of dealing</p>	<p>Three years from the date on which the record is made</p>
--------------------------------	--	--	----------------------------	--

