

CP23/13: Strengthening protections for borrowers in financial difficulty: Consumer credit and mortgages

'...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'

<https://www.fca.org.uk/publication/consultation/cp23-13.pdf>

<https://www.gov.uk/government/publications/debt-respite-scheme-breathing-space-guidance/debt-respite-scheme-breathing-space-guidance-for-creditors>

- ...we propose to introduce changes to our Consumer Credit (CONC) and Mortgages and Home Finance: Conduct of Business (MCOB) sourcebooks.
 - Our current rules in CONC 7 and MCOB 13 primarily apply to customers who have already missed a payment. The TSG [tailored support guidance, introduced in the coronavirus pandemic] 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
 - 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
 - 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

■ Mortgages

- ...firms must deal fairly with any customer who has or may have [in the future] payment difficulties.
- ...firms must react to information indicating a customer is, or may be, at risk of payment shortfall, [but] 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
- 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

- Mortgages (contd.)

- ...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
- 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

- Providing information to customers:
 - Firms should
 - give customers appropriate information *before* providing forbearance to help them to understand their financial position, their options, and the implications of any arrangements, including for their credit file
 - consider the most appropriate way to engage and communicate with customers, and offer to engage through a range of channels
 - *not* suspend or remove overdraft facilities or reduce credit limits if this will cause financial hardship

- Money guidance and debt advice
 - 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.
 - 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

- Credit (including overdrafts)
 - Current rules set 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

■ Mortgages

- Firms currently have to issue the MoneyHelper information sheet “Problems paying your mortgage” to customers in arrears. 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

■ Mortgages

- We currently require firms to give customers adequate information to understand the implications of any proposed arrangement
- 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.

- Escalating balances
- Some firms have allowed balances to escalate to levels which are clearly unsustainable for customers
 - We want to make permanent our [TSG] 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
 - 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

- Charges
- 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.
- We want to make permanent our [TSG] 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
 - 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

- Sustainable repayment arrangements
- 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
 - We propose introducing a requirement that firms must take all reasonable steps to ensure that any repayment arrangements agreed with customers are sustainable
- Reviewing forbearance measures
 - 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

- Income and expenditure assessments
 - Firms should have regard to the provisions in the Common Financial Statement [formerly facilitated by the Money Advice Trust] or equivalent guidance. We propose 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 [facilitated by MoneyHelper] or equivalent guidance.
 - Firms should 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.

- Income and expenditure assessments (contd.)
 - 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

- Repossessions
 - CONC 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. 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.

- Shortfall statements

- We propose to amend the scope of [MCOB] so that initial information about missed payments is provided earlier, once a customer is in payment shortfall (by any amount), and will 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 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] are not triggered if the shortfall is a result of an inadvertent payment error and is cleared within five working days.

■ Capitalisation

- 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
- 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 have been considered;
 - taking account of the customer's individual circumstances, the firm reasonably considers that capitalisation is in the customer's best interests

■ Record-keeping

- The TSG outlined our expectation that firms keep records of the support offered to customers. We 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.
- 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

- Ensuring arrangements remain appropriate
 - In the TSG, we confirmed our expectations that firms review customers' arrangements regularly, to ensure that their circumstances have not changed. We want to regularise this practice
 - It maybe 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

- Taking account of wider indebtedness
 - 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

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