

CP23/13: Strengthening Protections for Borrowers in Financial Difficulty: Consumer Credit and Mortgages

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Sent to: cp23-13@fca.org.uk

- UK Finance is the collective voice for the banking and finance industry.
- Representing more than 300 firms across the industry, we act to enhance competitiveness, support customers and facilitate innovation.

Executive Summary

- We welcome the opportunity to respond to the consultation on Strengthening Protections for Borrowers in Financial Difficulty and appreciate the extension to submitting the response.
- We note that while this consultation has been live, the Chancellor published the Mortgage Charter and the Financial Conduct Authority (FCA) published *PS23/8 Mortgage Charter: enabling provisions*. As the Mortgage Charter commitments are not forbearance and borrowers must be up-to-date with their mortgage to be eligible for a temporary switch to interest-only or the extension of the mortgage term, we do not think that specific changes are required to the proposals in this consultation. There may be some unintended consequences if the proposals take effect prior to the review of the Mortgage Charter, which we set out below.
- The industry welcomed the close engagement it had with the regulator during the coronavirus pandemic to develop, at pace, a suite of appropriate guidance measures to support impacted consumers.
- This guidance evolved over time and we agree that it is now appropriate to review it to see which elements are to be retained and incorporated into the sourcebooks, and then for the coronavirus guidance documents to be retired having served their purpose. However, we do not see clear justification for changing the regulatory weight of the existing Tailored Support Guidance (TSG) by transposing the expectations into Rules. We strongly support retaining the relevant sections as Guidance, without amendment, and not as Rules. We note that in *PS23/9: Finalised insurance guidance on supporting customers in financial difficulty*, the FCA retained the insurance TSG as guidance rather than Rules and agreed that the appropriate trigger point was when a customer contacts the firm because they are in financial difficulty. We consider that the FCA should maintain consistency in its overall approach to financial difficulty across the Handbook.
- The Borrowers in Financial Difficulty (BiFD) Review concluded that the majority of firms were meeting the expectations set out in the TSG and were providing tailored support to customers who were in financial difficulty following the pandemic. Individual examples of harm found within firms does not provide evidence of systemic issues within the existing regulatory framework and are better addressed by the FCA via firm-specific supervision. Therefore,

there is no evidence supporting the need for structural or material changes to the existing expectations in the TSG.

- Members of UK Finance have also considered this consultation through a Consumer Duty lens. The Duty extends the principle-based regulatory approach to allow firms to have the flexibility to tailor their support to achieve good customer outcomes. This should be preserved, as prescription can lead to standardised rather than individualised outcomes, which would be anchored in regulatory requirements, rather than focused on customer needs.
- The consultation does not provide a clear rationale for the proposals that go further than the original TSG or are unnecessarily prescriptive, which could affect the large majority of firms who are already achieving good customer outcomes. There are several areas where we believe the FCA's aims would be better served if the requirements focused on the outcomes they are aiming to achieve and allow firms the flexibility to achieve this based on their expertise and knowledge of their customer base.
- Members recognise the intent that customers should not be required to fall into arrears before support is offered or available to them. There is, however, subjectivity as to how a customer "at risk of payment difficulty" / "approaching arrears" might be defined. Whether through lender analysis, or through customer self-declaration, many lenders already have developed proportionate and appropriate mechanisms to raise customer awareness that support is available.
- Mortgage Arrears / Payment shortfall:
 - Members do not support the expansion of MCOB 13 to require firms to consider **all** accounts in payment shortfall as being in payment difficulty. An arbitrary measure of any sum missed on the mortgage (from 1 pence) is not a sophisticated or accurate indicator of a borrower's financial circumstances. We set out our concerns in this response, along with suggestions of how the FCA could maintain the existing position in the *Mortgages and Coronavirus: Tailored Support Guidance (Mortgages TSG)* which is greatly supported and enables firms to support borrowers in or who expect to be in financial difficulty.
 - Similarly, whilst we support the intent to provide borrowers with timely and relevant information, we do not think that the FCA's proposal to introduce new shortfall letters achieves this aim. A blanket, unilateral approach to communicating to all borrowers with any amount of shortfall does not seem to meet the intent of the Consumer Duty *Consumer Support and Consumer Understanding* outcomes. Instead, firms are better placed to develop and adopt their own communications strategies according to their customer base and target market. Many firms already have these strategies in place, and the new Consumer Duty will create a further uplift.
 - We do not agree with the FCA's intention to prescribe that firms could waive or defer capital or waive interest. As under the Consumer Duty, firms are required to demonstrate fair value under the *Price Value* outcome, these additions are redundant. The impact of this proposal is not adequately considered in the cost benefit analysis, neither have the consequential impacts on pricing, securitisations, and prudential regulatory requirements. We do not think that the FCA should set out proposals that goes into the commercial pricing decisions of firms.
 - We welcome the proposed change to the guidance on capitalisation of mortgage arrears and fully support the position.

- Repeat Overdraft Use:
 - Members do not support an expansion of the repeat overdraft rules that would deviate from the current definition of “*a pattern of overdraft use where the frequency and depth of use may result in high cumulative charges*”.
 - Firms’ policies and contact communications will be embedded based upon this definition. Whilst lenders recognise the intent to engage consumers early, this should be a consideration as part of the broader CONC 7 rules of supporting individuals ‘approaching arrears’, and not included as a repeat overdraft use requirement, where repeat use might not yet be evident.
 - Members agree that relevant information (from the Personal Current Account (PCA) of which the overdraft is provided) is appropriate but only to the extent that these identify a ‘pattern of use’ with the frequency and depth of use of the overdraft. The policy proposal is conflating an identified pattern of repeat overdraft use with other potential indicators of future financial difficulty.
 - Members are concerned that the proposed requirements of CONC 5D.1.1 R (4) (b) have the ability to generate unnecessary and confusing communications to consumers. The specific examples proposed are not necessarily indicative of a pattern of repeat use and therefore would require different tailored communications specific to the circumstances.

- Small Business Lending
 - The consumer credit coronavirus guidance was not applicable to small business lending, however changes to the CONC rules would bring sole traders and small partnerships into scope.
 - The characteristics of business borrowing are very different to that of an individual who more typically has a regular pattern of income and expenditure. The consultation has not articulated either the appropriateness of the requirements applying to the business lending cohort, or a cost-benefit analysis if firms were required to implement.
 - There are elements where members do not feel the rule requirements are directly relevant and / or are overly prescriptive. Whilst firms recognise that business customers should be aware that their lender is available to help them, and that small business owners should engage with their lender early, firms can act to deliver these more suitably and flexibly under their Consumer Duty obligations.
 - Members consider that there must be an explicit carve-out for the application to small business lending, in the same way that CONC 5D is only applicable to personal current accounts.

- Implementation timelines
 - We do not think that the proposals in the consultation should take effect until there is a more stable economic and interest rate environment. Given that the Mortgage Charter provides additional supports to mortgage borrowers, and FG23/2 confirms that the TSG expectations also apply to borrowers in financial difficulty due to the rising cost of living, we are of the view that any changes to MCOB 13 and CONC 7 should come into force once inflationary pressures have subsided. This will enable lenders to continue to support their borrowers via the TSG and new Consumer Duty, without the disruptive effects of Rule change and minimise any potential impact on the treatment of borrowers who are considered up-to-date for the purposes of the Mortgage Charter but may fall within scope of MCOB 13 once the rules are finalised.
 - We would expect that, as a minimum, firms are granted a 12-month implementation period once the Rules are enacted, as per standard practice. Anything less is not

considered realistic at a time where lenders are focused on supporting customers in an environment where arrears and instances of financial difficulty are forecast to increase. The FCA should also sequence the implementation period so that the review of the Mortgage Charter is complete before these proposals come into effect. In determining the implementation timeline, we ask that the FCA give due regard to the potentially overlapping and interlinked changing environment that will impact on the forbearance legal and regulatory framework, including the Consumer Duty Rules and Guidance, regulation of Buy-Now-Pay-Later lending, Credit Information Market Study, and Consumer Credit Act (CCA) reform.

- Challenges will be particularly acute where firms will need to undertake system changes. Alongside additional staff training, firms, for example, would be required to provide a copy of an income & expenditure document to their customer and amend their internal policy letters (i.e., mortgage shortfall) to align with the amended definition of a customer in 'mortgage arrears'. This will be at a particularly challenging time for front line staff who will continue to be supporting borrowers through a difficult economic environment.
- With clarification of the final rulebook requirements, members would be able to better assess the implementation timescales required to confirm if a minimum of 12 months is viable, including how this aligns with other regulatory and legislative change programmes. We welcome the opportunity to engage further with the FCA once the Policy Statement is finalised to agree an achievable implementation period.

Consultation Questions

1. Do you agree with our proposed changes to the scope of:

CONC 7

- 1.1. Members are supportive of the principle to extend the Consumer Credit Sourcebook to incorporate the appropriate elements of the tailored support guidance and provide support to customers at an early stage, where there are identifiable signs that they are approaching arrears.

The responses to the subsequent questions of the consultation set out areas of detail and recommendations as to how this should be achieved.

CONC 5D.2.1 R

- 1.2. In monitoring repeat use of overdrafts, firms are required to establish and monitor a pattern of use for their client base where the frequency and depth of use may result in high cumulative charges that are considered harmful, or indicate a customer is experiencing or at risk of financial difficulty.
- 1.3. In deriving their repeat use policy, firms agree that they should have due consideration for the length of time that a behavioural pattern is evidenced on the account which would be indicative of potential harm and trigger the appropriate engagement and intervention as appropriate. To that extent, firms will define within their strategies how they identify 'as early as possible' that the account is meeting the definition of the frequency and depth of

use that may result in high charges, and consequently when it is appropriate to contact customers regarding repeat use. The generation of inappropriate communications where the customer is not demonstrating repeat use could have the unintended consequences of dis-engaging customers from relevant communications when they are sent.

CONC 5D.1.1R and 5D.1.1A G

- 1.4. Members do not agree that a review of transactional level information from a customers' personal current account should be a mandatory consideration within repeat overdraft use rules, and which would consequently trigger the requirement to engage the customer. Members agree that relevant information (from the personal current account of which the overdraft is provided) is appropriate to the extent that these identify a 'pattern of use' with the frequency and depth of use of the overdraft. The policy proposal is conflating an identified pattern of repeat overdraft use with other potential indicators of future financial difficulty.
- 1.5. Members are concerned that the proposed requirements of CONC 5D1.1 R (4) (b) have the ability to generate unnecessary and confusing communications to consumers. These examples proposed are not necessarily indicative of a pattern of repeat use and, therefore would require different tailored communications specific to the circumstances. Members recommend that these examples are not included with the CONC repeated overdraft rules.
- 1.6. A significant reduction in income: of its own, this might not be an indicator of a future pattern of repeat overdraft use. An overdraft is a flexible product that can help smooth a customers' income and expenditure.
- 1.7. New period payment being established: PCA providers will not have the knowledge of the purpose or duration of the new borrowing commitment, or the up-to-date detail of the customers' finances upon which the lender would have based their decision. FCA regulated firms have a responsibility to ensure that new credit is sustainably affordable. New payments could represent a positive action taken by a customer, such as consolidating their debts whereby existing borrowing requirements would fall away, a customer switching their existing mortgage borrowing to a new lender and product, or a customer buying a car to enable them to take up a new job. The duration of the new period payment would also be unknown from a review of the current account.
- 1.8. Members are of the view that CONC 5D.1.1 R (4) (b) is overly prescriptive and intrusive to profile their customers, and that transaction level analysis of the account is not appropriate, especially for a mass market product which is managed at a portfolio level and where the frequency and depth of overdraft use has not identified a pattern of repeat overdraft use. Members do not support this proposal being included within CONC.
- 1.9. Lenders will monitor a customer's repayment record for signs of possible difficulty (CONC 6.7.2 R) or have policies and procedures for customers approaching arrears (CONC 7.2.1 R). They will develop appropriate early financial difficulty identification and engagement strategies, with appropriate and tailored messaging. Changes to income levels seen through a current account or changes in debt levels that might be a sign of over-indebtedness or future financial difficulty are more appropriately considered by lenders under these separate CONC requirements.

1.10. Similar to the BiFD review, we consider that the findings of thematic work on cost of living, involving a small sample of firms, providing a sub-set of consumer credit products is better addressed by the FCA via firm specific supervision rather than via making structural changes to the existing regulatory framework.

MCOB 13

1.11. The industry supports expanding the scope of MCOB 13 to align with the Mortgages TSG, FG23/2 Guidance for firms supporting their existing mortgage borrowers impacted by the rising cost of living (Cost of Living Guidance), and the June 2022 Dear CEO letter, which sets out that:

1.11..1. If a customer indicates that they are experiencing or reasonably expect to experience payment difficulties [due to rising cost of living], firms should work with the customer to resolve these difficulties before payments are missed (Mortgages TSG 3.3).

1.11..2. Firms should offer appropriate prospective forbearance to enable the customer to avoid, reduce or manage any payment shortfall that would otherwise arise (Mortgages TSG 5.10).

1.12. We do not support the FCA's proposed new rule at MCOB 13.3.1R 1(A) as, by setting a new presumption that any payment shortfall is an indication of payment difficulty, it significantly deviates from the position in the Mortgages TSG. As drafted, MCOB 13.3.1R 1(A) changes the expectations set in Mortgages TSG 3.3. Currently, firms are able to support borrowers who are or may expect to be in payment difficulty but have the ability to pay their mortgage. The new scope limits firms to support borrowers who are or may expect to be in payment shortfall.

1.13. As the FCA should be aware from their data collection and thematic work relating to Cost of Living and consultation on FG23/2, there is a population of borrowers who seek support from their lender due to concern about their financial wellbeing either by informing the lender themselves or as a result of proactive identification and contact strategies. Lenders currently provide support by signposting borrowers to budgeting tools on their own or external websites, money management guidance, debt advice, or, where appropriate, changes to the mortgage such as aligning direct debits with salary dates or term extensions. These borrowers may not be at risk of payment shortfall as they have an ability to pay their mortgage. By adopting a strictly prescriptive approach in Rules, firms will need to move away from existing, lender specific strategies which include subjective assessments of their portfolios' risk of payment difficulty, towards a specific market consensus on what these thresholds might be, to minimise the risk of regulatory breach and complaints (as the Financial Ombudsman Service (FOS) bases decisions on industry practice). We do not think that this meets the spirit of the Mortgages TSG, which has successfully enabled firms to take a bespoke approach.

1.14. Equally, as the FCA can see from the Regulated Mortgage Survey, there is a differing population of borrowers who are in payment shortfall (and under MCOB 13 will already receive communications from the lender about this) but are not evidently in payment difficulty.

1.15. It is not apparent from the consultation or cost benefit analysis to what extent the FCA has analysed the impact of changing the scope of MCOB 13 on (a) the population of

borrowers currently supported by lenders under the Mortgages TSG; and (b) the population of borrowers who meet the definition of payment shortfall. We are strongly of the view that the FCA should conduct a thorough analysis of their proposals before making changes to the Rules.

1.16. Instead, members fully support the position in the Mortgages TSG, which strikes the right balance by allowing firms to respond to borrowers in financial difficulty without waiting for mortgage arrears to present (generally accepted as 2 missed monthly payments). This ensures that, as per the Consumer Duty outcomes, lenders target their efforts to supporting consumers at the right time and in the way that they need.

1.17. Those in payment shortfall are likely to have very different needs and circumstances compared to those in mortgage arrears. As reiterated in the Mortgages TSG and the BiFD review, lenders should not take a one-size-fits-all approach. The FCA's proposed approach to treat all customers with any amount of payment shortfall as an indication of payment difficulty (and therefore, requiring the same form of communications) is contradictory to lenders' desire to adopt a tailored approach. As the FCA has not presented an analysis on the full impact of the proposal in this CP, we set out the evidence that we have been able to collect from members within the short timeframe given for consultation as follows (and encourage the FCA to conduct a more fulsome analysis before finalising their proposals):

Accounts in Payment Shortfall

1.18. UK Finance collected industry-only data from its members which was shared with the FCA in confidence. From the data, it does not seem sufficient to conclude that accounts in payment shortfall are in payment difficulty. The impact of the CP proposals would mean that firms will be sending out formal arrears communications to borrowers who might better benefit from communications that are more appropriate to their circumstances.

Further evidence to demonstrate why assuming that those in payment shortfall are in payment difficulty is neither sensible nor proportionate can be found examining cure rates. Data provided to the FCA in confidence demonstrates that using a simplistic measure of amount of payment shortfall, where the large majority self-cure, is not a credible way to determine if the borrower is in payment difficulty. The position in the Mortgage TSG, which allows lenders flexibility to respond to borrower circumstances is a far more reasonable measure to use.

Characteristics / Payment Behaviours

1.19. We are strongly of the view that, before making a determination of their approach, the FCA should conduct a thorough analysis of the characteristics of mortgage borrower payment behaviours.

1.20. The FCA, through its regular supervisory and case review activities should be aware of the payment behaviours that mortgage borrowers commonly exhibit. Some examples include:

1.20..1. persistent late payers.

1.20..2. where the direct debit is returned to drawer – the borrower may have forgotten to transfer funds to their main bank account or may have forgotten to transfer the full contractual monthly payment.

1.20..3. rounding errors, administrative adjustments etc. For example, where the payment taken is £390 instead of the amount due of £391.

1.20..4. borrowers who have one direct debit returned but this is represented immediately.

1.20..5. manual payers whereby bank holidays result in behavioural tendency to pay later or where the processing of payments is not completed in time for the specific payment due date.

1.20..6. borrowers with more than one account who may be in credit on one account that counteracts a small shortfall in another account.

1.21. These types of borrowers are highly likely to fall into the population who either self-cure or remain less than 1 monthly payment in shortfall. Without stronger evidence to the contrary, it does not make sense to automatically consider these borrowers as being in payment difficulty.

1.22. The FCA's proposal also has the unintended consequence of discriminating against borrowers who might not make a monthly payment via direct debit. Some examples include:

1.22..1. people who use standing orders, cheques and / or, cash in branch where the payment may be credited to the account later than they expect – these borrowers have a greater likelihood of being vulnerable;

1.22..2. people who pay by cash in branch and have not brought sufficient cash, for example if the Contractual Monthly Payment (CMI) that month had adjusted or changed;

1.22..3. people who are in receipt of benefit payments, which are weekly or have a 13-month cycle or, paid late (greater likelihood of vulnerability; sickness; disability);

1.22..4. people who are employed in industries where salaries are paid on a weekly / fortnightly basis (more likely to be lower-income cohorts) or self-employed borrowers, where lenders will allow them the flexibility to underpay and subsequently catch-up reflecting their less regular income patterns.

1.23. As both the new Consumer Duty and Vulnerability Guidance enables customers to exercise choice without being treated differently or receiving different outcomes, the FCA should ensure that their proposal does not result in differential treatment for those who do not wish to pay their mortgage in a 'standard' way via monthly direct debit.

1.24. *Materiality of the expansion of MCOB 13 as proposed:* In determining materiality of this change, it is not clear what consideration the FCA has given to:

- 1.24..1. the interaction with the Consumer Duty obligations – firms agree that they should have a range of communication options, and that borrowers should be provided with clear and understandable information to help them understand their financial position, however the prescription in MCOB 13.4.1 prevents them from tailoring communications according to circumstances or offering other supports outside regulatory forbearance;
- 1.24..2. the population of accounts in payment shortfall (as set out above);
- 1.24..3. the interaction with the Industry Voluntary Agreement on Mortgage Switching, which applies to up-to-date customers, which is defined as those with aggregate arrears of less than one monthly payment
- 1.24..4. whether the proposal aligns with purpose as set out in MCOB 13.
- 1.24..5. the potential consumer harm caused by arbitrarily considering all accounts in payment shortfall as payment difficulty vs. the benefits of engaging with borrowers early;
- 1.24..6. the Vulnerability Guidance to ensure that borrowers who are or are potentially vulnerable experience outcomes as good as those for other consumers and receive consistently fair treatment.

1.25. In making their decision on approach, we ask the FCA to also clarify the following:

- 1.25..1. treatment where an account has a sub-account for any reason – the FCA’s new approach would create complexity and there would need to be clarity around whether a customer should be treated as being in payment shortfall if a sub-account is in deficit even though their aggregate account position may be in credit;
- 1.25..2. whether firms will be required to rewrite Terms and Conditions that reference mortgage arrears or payment shortfall of 2 months down; and if so; that there is sufficient implementation time and a view provided for existing versus new contracts;
- 1.25..3. that firms service levels may decrease for a period while building the operational resource that is likely to be needed to ensure that capacity and service levels are maintained adequately (noting the existing lack of new resource in the labour market);
- 1.25..4. that firms are to continue or amend SUP 16 reporting requirements as both MLAR and PSD007 reference to ‘arrears’.

1.26. Despite the FCA’s reassurances that they have consulted with the PRA, it is not apparent from this consultation whether lenders will be required to consider these additional accounts as at risk of credit loss and therefore, increase capital provisioning against these. It is likely that the PRA may be influenced by the FCA’s assumption that these accounts are in payment difficulty. The subsequent changes to firms’ capital and accounting treatments have not been considered (or at least not evidenced in the CP or cost benefit

analysis), including the impact on firms' provisioning, credit risk and the likely unintended consequence of future credit tightening.

Industry position on retaining the Mortgages TSG

- 1.27. Instead, members fully support the position in the Mortgages TSG, which strikes the right balance by allowing firms to respond to borrowers in financial difficulty without waiting for mortgage arrears to present (generally accepted as 2 missed monthly payments). This ensures that, as per the Consumer Duty outcomes, lenders target their efforts to supporting consumers at the right time and in the way that they need.
- 1.28. To illustrate the effectiveness of the Mortgages TSG (which allows firms to provide formal forbearance before a borrower misses their mortgage payment) lenders' proactive engagement to offer help to those who cannot meet their full mortgage payment has resulted in nearly 200,000 borrowers being provided with mortgage forbearance in the year to January 2023. This pre-emptive support will mitigate the extent to which arrears accrues (as seen by the volume of mortgage arrears).
- 1.29. Additionally, in the same period, 2 million customers have been provided with financial difficulty assistance, including breathing space. This support helps customers who are worried about their finances or are likely to struggle to meet payments. By way of comparator, over the course of the pandemic, lenders provided 2.75 million mortgage payment deferrals. This demonstrates the huge extent to which lenders are engaging with their customers as part of their existing operations, relative to the large scale / mass media communications which occurred during Covid-19.
- 1.30. **Instead, we propose that MCOB retain the existing wording in MCOB 13.3.1R (1) and insert new Guidance that echoes the position in the TSG that “if a customer indicates that they are experiencing or reasonably expect to experience payment difficulties, firms should offer prospective forbearance to enable them to avoid, reduce, or manage any payment shortfall that would otherwise arise. This includes customers who have not yet missed a payment.”**
- 1.31. The industry accepts the point raised in CP23/13 paragraph 3.7 that a firm may become aware, for example, if they are told by a third party, such as a debt adviser (noting that if the borrower is subject to the HMT Debt Respite Scheme (Breathing Space), they will be unable to make contact with the borrower for the duration of Breathing Space). We note that FCA authorised third parties, such as debt advice charities are also subject to the Consumer Duty and should satisfy themselves that they are meeting the *Consumer Understanding* and *Consumer Support* outcomes in making any referral. **So, we would agree to the proposed amendment at MCOB 13.3.1R 1(A)(c) which could also be included as Guidance, but the FCA is best placed to determine how to incorporate this into the Handbook.**
- 1.32. We note that the consultation sets out that the FCA will not prescribe that firms must proactively identify borrowers in payment difficulty (although many firms already do so). We agree and ask that this is clarified in the proposed amendments to MCOB 13.
- 1.33. We note that the FCA has retained the existing position at MCOB 7.5.9G.

2. 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:

CONC 7

- 2.1. Members agree that reviews should be conducted on the effectiveness of any policies and procedures established to support customers in or approaching arrears.
- 2.2. Members agree that the review should be at 'appropriate intervals'.
- 2.3. In reviewing the effectiveness of policies and procedures (in CONC 7.2.4 R and 7.2.5 G), firms will consider this in respect of the support for customers in financial difficulty under CONC 7, rather than any wider consideration of other policy requirements. Firms will consider the effectiveness within the Consumer Duty requirements to deliver good customer outcomes.

MCOB 13

- 2.4. Members agree with the proposal at MCOB 13.3.1R (3) and suggest that it should be further amended to include reference to the Consumer Duty, specifically that it avoids causing foreseeable harm and support the delivery of good consumer outcomes.
- 2.5. Members seek more clarity on MCOB 13.3.1AA G, in particular, the FCA's expectations on how firms consider *the full extent of support provided to some customers*. Some examples of what members might consider as part of their review include:
 - 2.5..1. the outcomes and findings of any thematic reviews of policies and processes;
 - 2.5..2. customer level reviews;
 - 2.5..3. end-to-end outcome testing; or
 - 2.5..4. quality assurance.
- 2.6. While we do not think that it is necessary to be prescriptive in MCOB 13.3.1AA G, we ask the FCA to confirm in the policy statement that member intentions meet their expectations.

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

CONC 7

- 3.1. Changes to refer to the appropriate guidance for the fair treatment of vulnerable customers in FG21/1 is supported.

MCOB 13

- 3.2. Changes to refer to the appropriate guidance for the fair treatment of vulnerable customers in FG21/1 is supported.

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

CONC 7.3.5G & CONC 5D 3.3(4)G

- 4.1. Whilst members recognise the amendments to the rule provide a non-exhaustive list of potential examples of forbearance, the examples should not be considered as a minimum list of options that must be made available by all firms on each product.
- 4.2. The FCA should acknowledge that the examples are not a minimum list that all firms must provide, and recognise that, by way of an example, it would be disproportionate for a monoline credit card issuer to be required to create a new credit product and agreement (such as a loan) to help the customer reduce the debt over a reasonable period of time, when that objective can be achieved within the existing product.
- 4.3. Lenders will develop a suite of options appropriate for their product to support customers and through discussion with their customer identify the appropriate solution for their circumstances and achieve a good outcome.

MCOB 13.3.4AR

- 4.4. Members do not support the amendment at MCOB 13.3.4AR 1(C) and do not support the proposed new rule at MCOB 13.3.4AR 1(ca).
- 4.5. As set out by the FCA in TR18/5:
 - 4.5..1. The primary aim of forbearance should be to enable the complete recovery of the mortgage through the full repayment of arrears (FG11/15).
 - 4.5..2. In circumstances where this primary aim cannot be achieved, the secondary aim would be to recover the customer into a sustainable terms position on their mortgage.
 - 4.5..3. Sustainable terms are defined as revised contractual terms where the mortgage can be fully serviced over its full life (FG 11/15).
- 4.6. We strongly support the ability for firms to offer forbearance that is tailored to an individual's circumstances. More prescription within MCOB 13.3.4AR prevents firms from being able to respond flexibly outside of policy and procedures or through exceptions processes. Prescriptive rules (alongside the proposal at question 5) might have the unintended consequence of incentivising non-payment so that borrowers can attain a 'favourable' rate or waiver of capital. It would also necessitate a degree of cross-subsidy from mortgagors/ potential mortgagors who are not in arrears (see also paragraph 4.8 and 4.13).
- 4.7. Although MCOB 13.3.4AR (1) sets out that firms are to consider the forbearance option(s) that would be appropriate for the individual circumstances, it will always be financially beneficial for a borrower if the lender waived capital or interest or if the interest rate was reduced. This circumvents lenders' ability to work with the borrower to achieve either the primary or secondary aim of offering forbearance.

- 4.8. We do not think that it is the FCA's intent to subvert lenders' ability to support borrowers in financial difficulty to recover by simply extinguishing debt. This does not deal with the root cause of difficulties and may prevent exit through sale or repossession where it is in the borrower's best interest.
- 4.9. By giving these additional forbearance options equal prominence as existing options, the FCA is setting the expectation that lenders will consider these options, when they should only be considered within an exceptions process. The FCA is proposing that firms should have to consider agreeing to forego money it is contractually entitled to, and it is inappropriate for the FCA to seek to make rules that undermine firms' contractual rights in this way. Customers are entitled to flexibility as to the timing and pattern of repayment but not to a reduction in the amount they are required to pay. Additionally, all customers contractually agree to the payment of capital and interest. These new forbearance measures undermine the fairness of treatment of customers who maintain payments and creates the unintended consequence / moral hazard where customers enter into arrears in order to obtain a waiver of capital or interest. While lenders will always support customers in need of forbearance, we do not think that it is the FCA's intention to incentivise customers to want to take forbearance measures because they are advantageous to maintaining payments.
- 4.10. Lenders should also be able to maintain discretion to assist customers in vulnerable circumstances, depending on their needs.
- 4.11. The Consumer Duty requires firms to ensure that consumers pay a price for products and services that represents fair value. PS22/9 also confirms the FCA's expectations that firms can consider their expected costs over the lifetime of the product as part of assessing fair value. For a mortgage, a lender will consider whether the price paid is fair value (for the target market) over the life of the loan. If the lender is compliant with the consumer duty, the FCA should be confident that customers are receiving fair value and, therefore, more detailed prescription here is unnecessary.
- 4.12. PS22/9 paragraph 1.47 sets out that the FCA does not want to see firms reducing access to appropriate products and services that offer fair value to their target markets. Should the FCA stray into the commercial pricing decisions of firms by maintaining MCOB 13.3.4AR 1(c) and (ca), an unintended consequence is that firms adjust their target markets to ensure certainty against their fair value assessments.
- 4.13. The cost-benefit analysis at Annex 2 paragraph 91 sets out that the FCA does not believe that this proposal will materially impact upon firm revenues. It does not consider the loss that lenders will face if they waive capital or interest. It also has not considered the impact on securitisations.
- 4.14. If waiving capital / interest becomes a more explicit element within the forbearance toolkit, then this will supersede the terms of **existing** securitisations and investors in such securitisations will need to bear the losses / reduced return that results. The likely result may be that investors in new securitisations (or in securitisations refinancing existing securitisations) will want a higher return / more credit enhancement in order to cover the estimated cost of lost income from waivers / reduced rates going forward. They will seek to make prudent estimates of the losses (overestimating them until there is better

experience of the actual rate of loss) and this will mean customers need to be charged more to cover the additional funding costs. Effectively, those who maintain payments though the life of the mortgage will be subsidising those who benefit from interest / capital payments effectively being forgiven through the waiver / reduced interest rate approach. If this requirement is combined with the obligation to publish forbearance options, there is the added risk that all customers see waiver of capital / interest as their preferred option or that they are able to prioritise non-priority debt. There is also an additional complaints risk should the FOS uphold that it is standard industry practice to waive capital or interest.

4.15. Furthermore, the consequential impact on lenders' prudential regulation requirements has not been fully considered. Waiver of capital / interest or a change to interest would be considered an economic loss which lenders would need to provision for. The need to either write-off loans or hold greater capital against them will have consequential impacts on firms' balance sheets, which might reduce risk appetites, impact on pricing or competition. Due to the likely prudential impacts, it is important to consider the unintended consequences whereby the lender may seek to move to repossession faster, albeit remaining within conduct expectations.

4.16. The FCA states that MCOB 13.3.4CG confirms the list of forbearance options is not exhaustive. We ask the FCA to amend 13.3.4CG to align to the wording of the Mortgages TSG which requires firms to consider and use a range of forbearance options that meet the needs of the individual customer. A one-size-fits-all approach is not appropriate because different solutions are likely to be more appropriate for different customer circumstances.

4.17. Should the FCA wish to incorporate the forbearance options at MCOB 13.3.4AR 1(c) and MCOB 13.3.4AR 1(ca), **we ask that they insert this as Guidance and specify that these will only be considered in exceptional circumstances when other forbearance options have been exhausted.**

5. Do you agree with our proposals on the transparency and accessibility of forbearance options:

CONC 7.3.13A and CONC 5D 3.9G

5.1. Members are supportive of being transparent with their customers and provide information to help them understand their financial position, and how any forbearance will be reported factually on their credit file (see also response to question 7).

5.2. Members agree that customers should be able to change their preferred channel of communication to another available option to enable effective engagement.

5.3. Industry has continued to advocate for reform of the Consumer Credit Act (1974, as amended) (CCA) and the government commitment to reform is welcome. This reform will take time and industry wishes to highlight the continuing barriers that the CCA imposes on how forbearance options can be delivered to customers. For example, lenders may not be able to make or may be hindered in making contractual changes due to the CCA rules on modifying agreements. In addition, even if customers are not technically in arrears when a repayment plan is set up, non-payment of the contractual amount will trigger a Notices of Sums in Arrears (NOSIA) when the relevant triggers are met. CCA reform is needed here

to enable information requirements at this stage of the customer lifecycle to be more outcomes based.

- 5.4. The reference to CONC 5D.3.9 G in the question appears incorrect as this reference relates to the Income and Expenditure (I&E) assessment rather than transparency and accessibility of forbearance options.

CONC 5D 3.3G(7)

- 5.5. Members agree that it is appropriate to set out clear information on their website that support and forbearance is available to customers that are in or approaching arrears. The proposed CONC wording requires this to be 'prominent', and clarification is required as to how this should be interpreted (i.e. should it be considered consistently in line with the meaning of 'prominent' in respect of a financial promotion is defined in CONC 3.2.3 G).

- 5.6. Members do not agree that all potential forbearance and support options should always be published on the website. The provision of forbearance should be appropriate to the customers circumstances as identified through engagement. Providing a list can give the impression that the customer is able to self-select an option from a list. Consumers selecting an option that is not appropriate for their circumstances could lead to over-forbearance and conflict with the firms Consumer Duty obligations. Consequently, our recommendation is that firms are required to set out on their website that forbearance and support options are available that will help to reduce the outstanding debt levels, without being required to be specific as to the full suite of options that the firm might be able to offer. It could also lead to customers not being open and transparent in order to obtain an option of their preference and, therefore, not necessarily achieve the right outcome. By displaying forbearance solutions, it creates a risk that customers will be prescriptive in the solution they request. If the information available to the firm suggests that this might not be the best option for the customer, there is the risk of either providing a solution that will not deliver them the best outcome, or intervening and potentially either advising, or creating the perception of advice (a regulated activity that lenders are not typically authorised to undertake).

- 5.7. Where a firm offers an option to 'refinance' the outstanding overdraft borrowing onto an amortising loan, members do not support the requirement to provide an indication of eligibility criteria, interest rate and term.

- 5.8. The existing repeat overdraft use rules require firms to identify where the frequency and depth of use of the overdraft may result in high cumulative charges. In CONC 5D.2.1.R firms must then sub-divide these customers into those a) with signs of actual or potential financial difficulty, and b) those where there are no signs of financial difficulty.

- 5.9. These two vastly different cohorts are likely to be presented with different options in order to achieve the desired outcome, should a refinance loan be considered appropriate:

5.9..1. Customers where no financial difficulty is evident, are likely to be considered for a standard customer loan. This loan would not be considered as forbearance, and the account would not be reported to a credit reference agency as an arrangement.

5.9..2. Customers in financial difficulty may require forbearance options to be offered to achieve a sustainably affordable repayment. Where the forbearance is a non-commercial arrangement – e.g., Nominal or 0% interest, it would be reported to the credit reference agency as an arrangement.

5.10. Given the very different characteristics of the two sub-sets of customers who are identified as in Repeat Use, it would be confusing and potentially misleading for the customer for firms to try to provide information on both of these options, and for the customer to understand what options might be relevant to their circumstances.

5.11. Consequently, our recommendation is that the requirement to provide indications on eligibility, interest rate and term is not included in CONC 5D.3.3G(7).

MCOB 13.3.4CG

5.12. The Mortgages TSG para 5.35 refers to transparency more broadly, *“Firms should be transparent about the range of options they can consider when a customer is facing financial difficulties to enable customers and those advising them **to understand and evaluate the options.**”*

5.13. Members support the proposed amendment to MCOB 13.3.4CG (2)(a) and (b). Members do not support MCOB 13.3.4CG (2)(c) as drafted. While members support greater transparency towards customers and engagement through a range of channels, they do not support the proposal to publish the range of forbearance options in a prominent location on their websites.

5.14. It has been long-standing industry practice not to publicise which specific forbearance options a lender might offer, as it is more important that borrowers understand that (a) they should engage with their lender for help, and (b) they will be provided with forbearance that is tailored to their circumstances.

5.15. As per the experience when the FCA published the draft Cost of Living Guidance, this drove traffic to lenders from borrowers who thought that they could self-select into an interest-only forbearance option with no affordability considerations.

5.16. Similarly, the Money Saving Expert guidance on mortgage forbearance appears to suggest to borrowers that there is a hierarchy of forbearance options relative to credit file impact or menu that borrowers could self-select from. This illustrates the risks associated with publicising a fulsome list of forbearance options.

5.17. For example, a customer, after becoming aware of the potential to waive capital on the firm’s website, may demand / expect this treatment, even though it is not the best solution to enable recovery based on their circumstances. This could potentially lead to difficult interactions between the customer and the lender; increase rates of disengagement; or prevent customers from agreeing the arrangements that lenders offer. Therefore, whilst members welcome the intent for greater transparency with customers, members question the practicality of publishing all options to customers, especially in a prominent location on firm websites.

5.18. Instead, to support the FCA's ambition of greater transparency, while ensuring that communication is targeted, salient and relevant, we recommend that the proposed guidance is amended to enable firms to indicate in broad terms what options could be available to customers (for example, as per the UK Finance Cost of Living communications toolkit). This could be achieved by allowing firms to publish information that illustrates the types of forbearance options that are offered or that are most commonly used.

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

6.1. The consultation includes aspects where additional engagement, over and above that currently contained in the TSG could be required by firms. We have provided commentary as to whether members believe that these additional requirements are appropriate throughout the response. The FCA's Financial Lives Survey (January 2023, Section 3) found that over 1 in 10 UK adults put off dealing with financial matters, including ignoring warning letters, or not opening correspondence. Additionally, The FCA's Financial Lives 2022 (published July 2023) found that those not coping financially were also more than twice as likely as the UK average to put off dealing with financial matters, for example, by ignoring warning letters or not opening correspondence (24% vs. 10% of all UK adults). Notably, for those not coping with their finances, the percentage of those who ignored communications (24%) was higher than the percentage of those who avoided speaking of their lenders about their finances or debts (17%). This demonstrates that, for those in need to support, there are more people engaging with their lender than those engaging with letters/communications, which calls into question the efficacy of the FCA's proposals to increase lettering and communications.

6.2. Sending letters more frequently to vulnerable customers (including those who are not coping financially) may exacerbate this problem and create additional stress, causing the individual to continue to ignore communications. The implications of additional requirements to engage customers could have the consequence of driving increased demand for money guidance. The potential impact upon the debt advice sector capacity to handle increased volumes does not appear to have been considered. The generation of multiple communications at inappropriate times can also lead to the customer becoming disengaged and failing to lose the desired impact. It could also compromise a firm's ability to prioritise resources to the customers in most need of support.

CONC 7.3.7A

6.3. Members support the need to inform customers that free money guidance as well as debt advice is available through a range of channels.

6.4. Members also agree that the potential benefits of money guidance and debt advice are effectively communicated as this can help to encourage the customer to access these services.

6.5. The CONC requirements are for firm to inform of the availability of not-for-profit debt advice. This requirement would prohibit informing a customer of a commercial organisation that provides free-to-client debt advice. The commissioning of debt advice by the Money and Pensions Service (MaPS) that is funded through the FCA levy, includes a national contract awarded to a commercial firm that provides free-to-client debt advice, but is not a

not-for-profit organisation. The FCA should review this scenario, and the appropriateness of the rule, which could restrict industry from signposting to that commissioned advice organisation on its own (in spite of industry paying for this commissioned service). Industry has been advised by MaPS that after the free-to-client debt advice session, a customer who is offered a Debt Management Plan (DMP), must be offered a free-to-client DMP, and not a commercial DMP where the customer pays the cost of the plan.

- 6.6. Members do not consider it appropriate to anchor their considerations of support to consumer credit customers to an external document, the MaPS strategic toolkit for creditors. This document has been developed for all creditor types and lending products (including mortgages). It could be subject to frequent change and potentially stagnation over time should it not be subject to regular review. It will also introduce operational monitoring challenges as well as varying industry interpretations. Members, through their Consumer Duty obligations will use various sources of reference to develop and monitor strategies that deliver good customer outcomes. The reference to the MaPS document should be removed.
- 6.7. We would welcome FCA clarification of the intentions of PERG 17.7 example (13) where we believe there are unintended consequences.
- 6.7..1. A person recommends that a debtor obtains advice from a particular debt counselling firm, ABC Debt Management. Taken on its own it is not debt counselling because the adviser is advising the debtor to obtain advice from another adviser.
 - 6.7..2. However, if ABC Debt Management only offers one debt solution (e.g. a debt management plan), the referral could constitute a recommendation intended implicitly to steer the debtor in the direction of that particular debt solution and, therefore, could be advice (in which case it would be debt counselling).
 - 6.7..3. Consequently, whether or not debt counselling is involved will depend on the individual circumstances in each case and is likely to involve a consideration of the process as a whole
- 6.8. The structure of the debt advice market is such that some debt advice organisations might provide debt advice and recommendations across the breadth of potential debt solutions but offer no or limited debt solutions. The provision of the debt solution is outsourced. The Money Advice Trust and Citizen's Advice are commissioned by MaPS to provide national debt advice. They are not-for-profit organisations, however the only debt solution that they directly offer is the Debt Relief Order. Where they recommend a different debt solution to a client, which the client accepts, the client will be referred to a separate third-party debt solution provider.
- 6.9. The FCA should consider amending PERG to confirm that referral to a not-for-profit debt advice organisation that will advise a customer across a range of potential debt solutions, would not be considered debt counselling, irrespective of whether they only directly provide one debt solution or not.

MCOB 13.3.2AR

6.10. Members generally support the proposed new rule MCOB13.3.2AR (1ZA) however we ask that the FCA aligns this to the Consumer Duty by removing the reference to “effectively” and make reference to consumer understanding overall.

6.11. Given the implementation of the Consumer Duty, lenders also ask that the FCA provide further clarity on their expectations on how firms are to quantify and demonstrate consumer understanding. Response rates may be lower for customers in financial difficulty compared to those receiving communications about the end of a fixed-rate deal for example, so metrics or comparators may not provide useful Monitoring Information (MI). Similarly, it may be challenging to link actions with communications, for example, if lenders were required to provide shortfall letters as proposed, it may be difficult to identify causation or effectiveness when a large volume of borrowers self-cure irrespective of whether communication is sent or read.

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

7.1. For factual accuracy, references to “implications for the customer’s credit file” should be amended to “reflected on the customer’s credit file”.

CONC 7.3.13A and CONC 5D (5D.3.11 G)

7.2. Members agree that customers should be provided with clear information to help them understand their financial position and the potential impact of any forbearance of their overall balance. Information provided to the customer should take into account their individual circumstances, rather than their individual ‘characteristics’ and CONC 5D.3.11G 2 (a) should be amended accordingly.

7.3. Members also agree that the customer should be informed of how any forbearance or support arrangement will be reported to the Credit Reference Agencies (CRAs). Information provided on the customer credit file can only describe how the account information will be factually reported to the CRA for inclusion on the customer credit file. The firm cannot provide any assessment of the implications of the subsequent interpretation of that factual reporting, by either the CRAs or other lenders.

CONC 5D.3.2 R (5) - (7)

7.4. Members remain concerned that there is insufficient clarity of the intention and wording of the regulation in respect of the suspension, removal or reduction of an overdraft limit.

7.5. Members recognise an intent, that where customers are in repeat use and / or financial difficulty, they should be able to access their income to continue to make essential living costs and priority debts. The receipt of income should not unconsciously be used to repay debt, through the removal or reduction of the overdraft limit which has the consequence of restricting access to income to meet essential living costs. Conversely, customers should not always be able to continue to use any unutilised overdraft headroom to increase their indebtedness to the bank to allow priority bills and essential living expenses to be paid. Members will need to engage their customers to understand their individual circumstances, and some members have noted that decisions from the FOS have adjudicated against

lenders because overdraft limits are not cancelled or reduced to prevent a customers' debt increasing.

7.6. The practical approach that members should be allowed to adopt when considering whether / the extent to which an overdraft limit could be cancelled or reduced and whether that would cause 'financial hardship' should be clarified and cover:

7.6..1. Customer has been using their overdraft limit, and their income continues to be received into the account. Any changes applied to the overdraft limit should have consideration to the previous maximum debit balance - i.e. where income continues to be received, that income should not be used to always immediately reduce the level of maximum overdraft debt permanently, so that the customer cannot continue to have access to the use of their 'income' to meet their essential living costs and priority bills whilst a mutually agreed forbearance plan is agreed.

7.6..2. However, whilst consumers should have the ability to access their income to meet priority debts, Lenders cannot be mandated to allow the customers maximum overdraft debt to increase through additional spending, irrespective as to whether that is priority and essential spend or not. For example, where a customer diverts their income to a different account, or where the customer has a deficit budget (priority debts and essential costs exceed income), lenders should not be obliged to allow the overdraft debt to increase unchecked. Where there is significantly increased risk of the debtor being unable to fulfil their obligation to repay the credit, under section 98a of the CCA, lenders have the ability to terminate the agreement, and that principle for lenders to manage their credit losses should be available to them through reducing the unutilised element of overdraft facilities where significantly increased risk is identified.

MCOB 13.3.4AR (2)

7.7. The FCA indicates that the objective of this proposal is to ensure that the customer understands the implications if, for example, they are concerned about the effect of agreeing an arrangement on their credit file, does not agree to it, and then misses a payment. However, the FCA also says that the list of information that firms should provide to customers is not exhaustive.

7.8. This requirement is redundant as firms already provide adequate information on the implications of agreeing an arrangement to pay.

7.9. The FCA proposes deleting the requirement to provide information in the annual statement. We do not believe that it is necessary to make these changes. The inclusion of new terms in the annual statement does not present any harm and it might help to remind customers of their mortgage terms. This proposal should be balanced with the impact this change would have on firms who would be required to make burdensome system changes in an otherwise crowded change agenda, including as a result of the outcomes of this CP.

7.10. Paragraph 3.43 states that firms are unlikely to satisfy the proposed information requirements solely by providing information under the annual statement provisions. We

ask the FCA to clarify how firms are to satisfy the FCA's expectation if not via the annual statement.

7.11. We ask the FCA for more guidance on their expectations:

7.11..1. Does the FCA expect firms to provide calculations of Total Amount Payable where the borrower does not agree to an arrangement to pay (and is this on the basis that the borrower continues to accrue arrears?). It would be helpful to have clarity on how this would work e.g., is it assuming the level of debt remaining or how it increases over time? Lenders can provide an estimate based on what has been agreed and on the assumption that the agreed payments are maintained.

7.11..2. Does the FCA expect firms to calculate the interest payable over the loan term?

7.11..3. Overall, this level of detail cannot be provided by agents while engaging with the borrower, it would only be feasibly provided later, via durable medium.

MCOB – para 3.45 in the CP

7.12. We do not think that providing borrowers with a reasonable time to consider the implications of an arrangement is warranted and could lead to further detriment, if as a result, borrowers continue to miss their payment or delay agreeing an arrangement (with consequential credit file implications).

7.13. Maintaining engagement with borrowers is essential and we question the efficacy of creating an arrangement setting process that requires the customer to engage more than once.

7.14. If the FCA considers that there is merit in disrupting the existing customer journey, we recommend that any reflection period applies in the same way as in other financial processes. That is, the arrangement to pay is agreed unless the customer comes back within the period to ask for a change in payment amount or to discuss affordability concerns. We note that borrowers are already able to amend or reset arrangements at any time, in addition to review dates.

8. Do you have any comments on these consequential amendments:

CONC

8.1. Members support the consequential changes to CONC to consistently reflect the references to the Vulnerability Guidance, and expansion of the scope of certain post contractual requirements to customers 'approaching' arrears.

MCOB

8.2. As per our response to Question 1, while we agree that references in MCOB 13 should refer to treatment of customers in payment difficulties more broadly, we do not agree that customers in payment shortfall can be arbitrarily considered as being in payment difficulty.

CREDIT SPECIFIC PROPOSALS

- 9. 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?**

CONC 7.3.5G R (2) and CONC 7.3.5 H G

9.1. Members support the transposition of the expectation that where a firm puts in place a sustainable repayment arrangement as a forbearance measure, and whilst the customer is meeting the terms of the arrangement, interest and charges must be reduced or waived to ensure that the debt does not increase.

9.2. Members agree that if the customers circumstances change, and the payments under the arrangement can increase, the lender could review the previous assessment of the extent to which interest and charges are reduced or waived, as long as the application of such charges will not cause the debt to increase.

- 10. Do you agree with our proposals on introducing guidance to help firms determine necessary and reasonable charges?**

CONC 7.7.6 G

10.1. We have no comment or feedback on this, and it is noted that Principle 12 (Consumer Duty) has a price and value outcome.

- 11. Do you agree with our proposals on sustainable repayment arrangements?**

CONC 7.3.5B/C and CONC 5D.3.4 R and 5D.3.5 G

11.1. Members agree that in establishing a sustainable repayment programme, this should consider whether the priority debts and essential living expenses that are relevant to the customer can be met. The FCA should acknowledge that members will define in their policies what 'reasonable steps' are considered appropriate and proportionate for assessing any measure and how sustainability is to be assessed relative to the duration of the arrangement (for example the proportionate approach to agree a staged overdraft reduction could be different to a long-term repayment plan).

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

CONC 7.3.5I R and CONC 5D.3.6 R

12.1. Members agree that they should take reasonable steps to ensure that any forbearance and support provided to a customer remains appropriate.

12.2. Members agree that these reviews would be appropriate to the nature of the forbearance and the customers' circumstances.

12.3. Where a firm seeks to review the appropriateness of the forbearance with the customer, but the customer does not respond, members are of the view that:

12.3..1. as long as reasonable steps have been taken to contact the customer; or

12.3..2. the original arrangement payments are continuing to be met; and

12.3..3. the firm is not aware of any additional information that should terminate the agreement.

The firm should be allowed to continue the arrangement for the originally agreed duration, and not be cancelled. The firm ability to continue the arrangement should be confirmed by the FCA rules. Customers should have a responsibility to engage their lender where their circumstances change.

12.4. Members are keen that their resources are prioritised to those customers who most need support. Requiring firms to contact customers who may be doing well on an arrangement potentially dilutes / distracts the support available to those most in need – particularly if the review requires outbound calling. We would welcome further guidance on what constitutes a “review” and acknowledgement by the FCA that reasonable steps could be a presumption that where a customer continues to make payments and have not contacted / responded to the firm on their payment plan, that the forbearance measures remain appropriate – in particular if this is coupled with clear reminders as part of the original assessment that customers should engage us if they think their circumstances are changing (for better or worse). Customers must share the responsibility to engage and update firms with information / changes so that firms can best support them and ensure that their resources are pointed at those most in need.

13. Do you agree with our proposals for firms to objectively undertake income and expenditure assessments?

CONC 7.3.5D/E and CONC 5D.3.8/9

13.1. Members agree that where a firm assess income and expenditure it must do so objectively.

14. 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?

CONC 7.3.5F G and CONC 5D.3.10 G

14.1. Members agree that firms should have clear written policies setting out how and in what circumstances it conducts an I&E assessment.

CONC 7.3.7 A (4)

14.2. Members recognise there is value in a record of the I&E assessment that has been conducted in collaboration with the customer, to be shared with the customer.

14.3. Many members do not agree that this should be a mandatory requirement on consumer credit lenders. The TSG (para 5.35) established that firms “should, where possible and within its existing systems capabilities, share a record of any I&E assessment that they complete with customers or make these available to customers”. This aspirational outcome should be carried over into CONC. A mandatory requirement to share the I&E assessment could generate unnecessary costs and complexity for regulated firms, and where system change and development is required, is unlikely to be achieved in the anticipated 3-month implementation period. The FCA should consider the need for debt advice organisations to share I&E, especially where an organisation providing an advice recommendation then refers the consumer to another organisation to fulfil the debt solution.

14.4. Members support a consistent approach to making the I&E available to that being proposed for mortgages under MCOB 13.3.4C G (4) and that the information is shared “where possible”.

14.5. Members recognise that there is value in a customer engaging in their finances and having an understanding of their income and expenditure. Industry is supportive of the customer creating and maintaining an I&E that they can share with their creditors. There are a range of tools such as those available on lender or debt advice organisation / charity websites that can be used. Industry also recognises that there are opportunities to embed good financial behavioural practice (budgeting awareness) as a way for customers to avoid entering into financial difficulty or self-identifying the need to seek assistance at an early stage. This financial awareness should continue to be developed within the MaPS broader remit of financial education.

15. Do you agree with our proposals on repossessions?

15.1. We have no comments on the repossession proposals.

16. Do you agree with our proposals on voluntary termination?

CONC 7.3.21 G

16.1. We have not assessed or provided any views on the approach to voluntary terminations.

17. Do you agree with our proposed amendment to CONC App 1.2?

17.1. We have no comment on the change to CONC App 1.2.

MORTGAGE SPECIFIC PROPOSALS

18. Do you have any comments on the increasing balances proposals?

18.1. See response to question 4.

18.2. Members support MCOB 13.3.4AA (3)(a) as proposed.

19. 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?

19.1. See response to question 1.

19.2. Members support the intent that customers in payment difficulty receive the information that they need at the right time. However, as per our response to question 1, the FCA's proposal applies to broader cohort of borrowers who may be in payment shortfall but are not in payment difficulty.

19.3. Lenders are committed to proactively engaging with borrowers who may be at risk of financial difficulty (as evidenced above). As part of the Consumer Duty, lenders are required to understand their target market and customer base. This puts them in the best position to analyse their own books to determine which borrowers might be at risk or benefit from proactive outreach or communications.

19.4. Additionally, lenders already have policies and contact strategies in place for borrowers who enter into payment shortfall but are not in arrears. Since the pandemic, the industry has worked to ensure that the tone and content of communications, including health warnings to those in arrears are empathetic and meet the needs of the consumer. The Consumer Duty will also create an uplift.

19.5. There should be no one-sized-fits all approach to how lenders communicate with those who might be at risk of financial difficulty. Lenders approaches will consider the characteristics of the borrower, including vulnerabilities, especially mental health. Similarly, lenders might consider the effect of issuing letters where the cost of doing so outstrips the amount outstanding and there may be exceptions processes to write-off immaterial amounts of shortfall.

19.6. As stated above, the FCA's own findings in the Financial Lives Survey published in January 2023 and July 2023 highlights the consequences to consumers' wellbeing from receiving letters and correspondence when there are financially stressed. Additionally, the impact from receiving communications that they did not understand had a far greater detrimental impact than from attempting to get in touch with a provider and not getting through.

19.7. We are strongly of the view that the FCA should work with consumer groups, use the findings of their own consumer research and conduct a thorough analysis of the impact of their proposals on borrowers' wellbeing to clearly explain how the changes are mitigating risks of harm before finalising this proposal.

19.8. It is not clear if the FCA has considered the harm that might be caused to borrowers who might receive a shortfall statement where it is not relevant to their circumstances (as per the examples of borrower payment characteristics presented above). One of the aims of these communications is to generate customer engagement. As per our response to question 1, a significant proportion of those entering into payment shortfall self-cure within 30 days. These communications are, therefore, likely to result in an increased volume of borrowers contacting their lender to understand what support they could receive. It is unclear what customer support conversation or journey would be required for a borrower

who has paid off a shortfall but have received a letter instructing them to contact their lender for support.

19.9. Therefore, we do not support the proposed amendments to MCOB 13.4 in its current form, as this results in firms being required to send formal arrears communications to customers whose mortgage account is not-up-to-date, regardless of the borrower's circumstances and ability to pay their mortgage.

19.10. The FCA could, instead, set out a more proportionate and outcomes-based approach to achieving consistency when borrowers receive information. The FCA could introduce a requirement for lenders to have an approved policy and procedure that sets out a contact strategy for borrowers who are in early payment shortfall, taking in to account the amount and any known circumstances relating to the occurrence. This should not be prescriptive. This approach allows firms to manage their Consumer Duty obligations, while avoiding the material risk of harm to borrowers' mental wellbeing as a result of sending communications to those who have a shortfall for reasons other than financial difficulty.

19.11. We re-iterate the examples of borrower payment characteristics that the FCA has not apparently fully considered in the consultation or cost benefit analysis, and strongly urge the FCA to conduct a thorough assessment of the impact of their proposals of this population of mortgage borrowers and set out the results before finalising their approach:

19.11..1. borrowers who do not pay by direct debit and instead use standing orders, cheques, cash in branch etc. which lends itself to rounding / decimal errors in payment and include consumers who have a greater likelihood of being less digitally enabled;

19.11..2. borrowers who pay by cash in branch and have not brought sufficient cash, for example, if the CMI that month had adjusted or changed;

19.11..3. those in receipt of benefit payments which are weekly or have a four-weekly (rather than monthly) income cycle, or are paid late;

19.11..4. those employed in industries where salaries are paid on a weekly / fortnightly basis, which can create shortfalls within the month but may cure on a cyclical basis;

19.11..5. self-employed borrowers who may make quarterly payments that adjust against the outstanding balance and may therefore dip in and out of payment shortfall over a year, but are not an indication of payment difficulty;

19.11..6. persistent late payers (e.g. mortgage payment due 1st of the month, but they pay on the 16th of the month. This would trigger a shortfall letter but be irrelevant by the time it is received);

19.11..7. where the direct debit is returned to drawer as the borrower may have forgotten to transfer funds to the relevant bank account. BACS Direct

Debit Guidelines may limit firms' ability to re-issue instructions for the direct debit payment before 15 days;

19.11..8. borrowers who have a static or minimal shortfall amount remaining but intend to clear any outstanding balance at termination of the contract / sale of property / re-mortgage.

19.12. As per MCOB 13, lenders already contact customers when they miss some, or all, of their mortgage payment. As the FCA should be aware from the BiFD review, Cost of Living thematic work and supervisory activities, since the implementation of the Mortgages TSG and FG23/2, lenders have put in place strategies to identify those most at risk of missing payments. This includes proactively contacting them to remind them of upcoming payments and signposting them to websites and resources for support. Lenders also send reminder notices to borrowers to let them know that they have missed some or all of their payment and use these to check that the borrower is not in financial difficulty. Given that the FCA has not presented current evidence on the scale and breadth of lender activities, we provide it here:

19.12..1. In the year to end January 2023, lenders have proactively contacted customers who are worried about their finances a combined total of 16.5 million times to offer support.

19.12..2. To demonstrate how comprehensive lenders' strategies are, this includes via post, telephone, email, SMS, website, and app messaging, with individuals often contacted more than once to ensure that they know that help is available.

19.12..3. At the start of January 2023, lenders expected this to increase to 20.5 million contacts in 2023. This number is highly likely to have increased.

19.13. Overall, we think that the FCA's proposal is too constraining, preventing firms from developing communication strategies that best meets borrower needs. Instead, we are of the view that:

19.13..1. the existing wording in MCOB 13.4 be retained;

19.13..2. a new requirement is introduced for lenders to put in place a written policy and procedures for communicating with borrowers who are in early payment shortfall, taking in to account the amount relative to the monthly payment due and any known circumstances as to their occurrence.

19.14. At a minimum, the proposed amendment at MCOB 13.4.1R (6) and MCOB 13.4.4AR must be amended to read "*does not apply where the shortfall is cleared in 30 days or occurs due to a known circumstance*".

20. Do you agree with our proposals to amend the guidance in MCOB 13.3.4DG?

20.1. Yes. Members are greatly supportive of greater flexibility on being able to capitalise mortgage arrears. This will enable members to act in accordance with the customer's best interests.

21. Do you agree with the factors we propose a firm considers when determining whether capitalisation is appropriate?

21.1. Members agree to consider the root cause of the payment shortfall as a factor for justifying capitalising mortgage arrears. This will separate the customers who are not credit-worthy with those who are able to make payments and recover, allowing members to tailor individual responses.

21.2. Members agree to consider other options which repay the shortfall more rapidly before agreeing to capitalise a payment shortfall.

21.3. Members agree to account for individual circumstances to ensure the capitalisation of arrears is in the customer's best interest.

22. Do you have any comments relating to determining the affordability of future capitalised payments?

22.1. Members are supportive of considering the affordability of customer's future capitalised payments and agree with the FCA's approach not to prescribe how firms determine this.

23. Do you agree with our proposals for firms to ensure that forbearance arrangements remain appropriate?

23.1. Members support the proposed amendment at MCOB 13.3.4AR (3)(b).

24. Do you agree with our proposed guidance on what we consider to be reasonable steps?

24.1. Members agree with the proposed guidance at MCOB 13.3.4ABG and 13.3.4ACG.

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

25.1. We agree with the proposals to provide additional guidance at MCOB 13.3.4CG. However, it would be helpful to reference the distinction between priority and non-priority debts that firms apply in practice. That is, when a customer is in payment difficulty on a mortgage, the firm will prioritise support for this debt, while taking into account any other priority debts that they may have. For non-priority debts, borrowers are signposted or referred to debt advice to consider the wider financial position.

We ask for more guidance from the FCA on how firms are to meet proposed MCOB 13.3.4CG (3) alongside meeting the expectations in PERG 17 in the context of the Consumer Duty consumer understanding outcome. The FCA states in PS22/9 that:

If a firm is not authorised to provide advice, it should equip its customers with information to make effective decisions in a way that does not amount to advice. Firms will not be in breach of the Duty where they act appropriately within the remit of their role. While we are

wary of reducing the consumer protections that apply for advice, we acknowledge that some consumers might benefit from communications that give a stronger steer on appropriate action to take even where the relationship is on a non-advised basis.

25.2. The FCA could consider amendments to PERG 17.7 to provide greater clarity on meeting the underlined above. PERG 17.7 Examples 14 and 16 could be better aligned with the proposed amendment to MCOB to make clear that conversations, including on priority debts, as part of taking into account wider indebtedness is not considered debt counselling. PERG 17.7 example 15 is more enabling and could be replicated in examples 14 and 16.

26. Do you agree with our proposal for firms to share income and expenditure assessments with customers where possible?

26.1. The Mortgages TSG paragraph 8.8 states that “*Where a customer indicates that they are experiencing payment difficulties with other debts, the firm should, where possible within their existing systems capabilities, share a record of any I&E assessment that they complete with customers or make these available to customers so that they are able to share them with other lenders and debt advice providers.*”

26.2. Members support the proposal, however, ask that the FCA directly transposes the requirements in the Mortgage TSG by inserting the words “where possible, *within their existing systems capabilities*” into MCOB 13.3.4CG (4).

26.3. We note that the joint regulators Dear CEO letter of 28 June 2023 stated that all firms are expected to “*consider using an objective / standardised measure to assess the customer’s financial circumstances to help minimise the burden of them having to provide different information to different firms*”. We do not think that MCOB 13.3.4CG(4) should go further than as proposed.

27. 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?

27.1. Members are supportive of the intent of the proposal to keep records of interactions with customers who are or may have financial difficulty, subject to our response at question 1.

28. 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?

28.1. Yes, members agree to the proposed clarification on recording video calls in MCOB 13.3.9R.

28.2. It is unclear what the FCA means by the second part of the question.

29. Do you have any comments on the proposed amendments to MCOB 13.8?

29.1. In principle, no comments, subject to our response to Question 1.

30. Do you have any comments on the consequential impacts to:

MCOB 14

30.1. In principle, no comments, subject to our response to Question 1.

MCOB 15

30.2. In principle, no comments, subject to our response to Question 1.

If you have any questions relating to this response, please contact Sonia Fernandes, Principal, Mortgages at sonia.fernandes@ukfinance.org.uk or Ian Fiddeman, Principal, Personal Credit Policy ian.fiddeman@ukfinance.org.uk.

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