



**To the CEOs of firms which are either mortgage lenders or administrators**

**27 November 2008**

Dear CEO,

**ARREARS AND REPOSSESSIONS**

We are writing to Chief Executives of all mortgage lenders and all mortgage administrators. This is to remind you of your responsibilities under our mortgage conduct of business rules for ensuring the fair treatment of customers in arrears.

We will publish a copy of this letter on our website on Friday 28 November.

**Background**

Conditions in the mortgage market are difficult and it seems likely that these conditions will persist for some time. In such a challenging operating environment, it is particularly important for senior management to ensure the fair treatment of customers, including when they go into arrears.

The FSA's requirements for the fair treatment of consumers in arrears or facing repossession are set out in Chapter 13 of the Mortgages and Home Finance: Conduct of Business Sourcebook ('MCOB'). They include the need for firms to have a written policy and written procedures in place setting out how they will deal fairly with customers, and specify that firms should only use repossession as a last resort. Further details on our requirements can be found in the annex.

## Action for firms

Our recent review of arrears management practices suggested that, to a varying degree, firms have work to do on this front (see

[http://www.fsa.gov.uk/Pages/About/What/thematic/mortgage\\_arrears/index.shtml](http://www.fsa.gov.uk/Pages/About/What/thematic/mortgage_arrears/index.shtml))

In the light of this, and the increasing numbers of households at risk of repossession, we expect that your firm would want to review its own policies and procedures, to ensure they are compatible with both MCOB and our wider Treating Customers Fairly ('TCF') requirements. In particular, we expect Senior Management will want to take the following actions:

- critically review current arrears policy;
- critically review current management practices and procedures; and
- assess whether, *in practice*, borrowers in arrears are being treated fairly by initiating a review of a sample of cases to assess whether the FSA's requirements are being met. You will be aware that since March 2008 all firms are expected by the FSA to have appropriate management information or measures in place to test whether they are treating their customers fairly (see [http://www.fsa.gov.uk/pubs/other/tcf\\_implementation.pdf](http://www.fsa.gov.uk/pubs/other/tcf_implementation.pdf)).

This should enable your firm to establish whether it has any weaknesses in its arrears management policies and practices. Should you conclude that it does, we would expect you to take the necessary steps to address those issues as a matter of urgency. The fair treatment of consumers in arrears will continue to be a priority for the FSA throughout 2009. Where we find that lenders are not complying with our requirements we will make appropriate and properly targeted use of our existing regulatory tools, which may include enforcement action.

We should be grateful if you, in your capacity as Chief Executive, could communicate your conclusions and any actions that you propose to take to your relationship management team at the FSA by 31 January 2009.

If you have any comments or questions, please speak to your relationship management team.

A handwritten signature in black ink that reads "Jon Pain". The signature is written in a cursive, flowing style.

Jon Pain  
Managing Director  
Retail Markets  
Financial Services Authority

## **Annex A - Chapter 13, Mortgages and Home Finance: Conduct of Business Sourcebook** (<http://fsahandbook.info/FSA/html/handbook/MCOB/13>)

### **Written policy and procedures**

Lenders must have a written policy and written procedures in place that can be used to ensure that customers in financial difficulties are treated fairly (MCOB 13.3.1.R). This requirement is intended to ensure that a firm has properly addressed the need for internal systems to deal with each customer in financial difficulties. The rules set out a number of factors which the FSA considers central to such a policy and procedures (MCOB 13.3.2.R):

The lender should:

1. spell out the alternative steps to taking repossession of the property and the reasonable efforts that will be used to reach agreement with the customer over the repayment method;
2. liaise with the customer's solicitor or debt adviser regarding the financial difficulties, if the customer makes arrangements for this;
3. take a reasonable approach to the time over which the shortfall should be repaid. This approach should be decided upon with reference to the circumstances of the customer;
4. take a reasonable approach to agreeing to a request for changes to the payment date or the method by which payment is to be made;
5. if the lender has good reason to refuse such a request, provide a written explanation of the refusal;
6. give consideration to whether the customer should be allowed to remain in possession to effect a sale when no reasonable payment arrangement can be made;
7. repossess the property only when all other reasonable attempts to reach a resolution have been unsuccessful.

### **What constitutes 'reasonable attempts' to reach an agreement?**

(MCOB 13.3.4G) With the agreement of the customer, the lender may wish to extend the term of the mortgage, change the type of the mortgage, defer the payment of interest due or treat the payment shortfall as if it were part of the original amount borrowed. Whatever arrangement is proposed, sufficient information must be given to the customer enabling them to understand the possible impact of any proposed arrangement.

The customer should be given 'a reasonable amount of time to consider any proposals for payment that are put to them'.

### **Provision of information to the customer**

(MCOB 13.4.1.R) If a customer falls into arrears a lender must, as soon as possible, and in any event within 15 business days of becoming aware of that fact, provide the customer with the following:

1. the current FSA information sheet on mortgage arrears;
2. a list of due payments either missed or only paid in part;
3. the total sum of the payment shortfall;
4. the charges incurred as a result of the payment shortfall;
5. the total outstanding debt; excluding charges that may be added on redemption; and
6. an indication of the nature (and where possible the level) of charges the customer is likely to incur unless the payment shortfall is cleared.

The FSA information sheet is available on the FSA web site ([http://www.moneymadeclear.fsa.gov.uk/pdfs/mortgage\\_cantpay.pdf](http://www.moneymadeclear.fsa.gov.uk/pdfs/mortgage_cantpay.pdf)).

When a customer is in arrears and charges become payable as a result, the lender must provide, at least once a quarter, a statement identifying what charges are being incurred, the

payments due, the actual payments shortfall and the total debt (MCOB 13.5.1R).

### **Steps required before a lender can commence an action for repossession**

(MCOB 13.4.5) Before a lender can begin an action for repossession it must provide the customer with a written update detailing a list of the due payments either missed or only paid in part, the total sum of the payment shortfall, the charges incurred as a result of the payment shortfall, the total outstanding debt and an indication of further charges likely to be incurred. The lender must ensure that the customer is informed of the need to contact the local authority concerning eligibility for local authority housing after the property is repossessed. Note: This message has been reinforced through the Civil Justice Council's new pre-action protocol for courts in mortgage repossession cases (currently applicable in England and Wales). That sets out clearly the steps that lenders are expected to take before bringing a claim to the courts to repossess someone's home. Repossession should be a last resort and lenders are now required to demonstrate to the courts that they have tried to discuss and agree alternatives to repossession.

### **Appointing receivers**

Note: There has been some recent publicity about the implications of a High Court ruling which upheld the right of a receiver appointed by a lender to sell a buy to let property without the need for a court order. While we do not prevent firms from taking action to recover possession of a property (whether through obtaining a court order or otherwise) where circumstances justify such a course, we do require that each customer be treated fairly at all times. Whether a particular action is fair or not will depend on the circumstances of each case. If a firm were to opt to appoint a receiver (under the Law of Property Act 1925) and any powers in its mortgage deed in respect of an owner-occupied residential property, with a view to the sale of that property in circumstances where they would not have succeeded in getting a court order for possession, we would have serious concerns over whether that firm was acting fairly.

### **Dealing with a customer in arrears & 'pressure on customers'**

(MCOB 13.5.3) A lender must not put pressure on a customer through excessive telephone calls or correspondence, or by contacting them at an unreasonable hour. A reasonable hour is at a time between 8am and 9pm.

The lender would also be expected to have proper regard to a customer's work pattern or religious faith in determining when it would be appropriate to contact him. As to what amounts to pressure, examples include the use of documents that resemble court summonses and the use of documents that are unfair, unclear or misleading, with the purpose of attempting to coerce customers into paying.

### **Repossessing a property**

On repossessing a property a lender must market the property for sale as soon as possible and obtain the best price that might reasonably be paid, taking account of market conditions and the continuing increase in the amount owed by the customer (MCOB 13.6.1). The fact that a balance has to be struck is recognised, however. For example, it may be necessary to delay a sale in order to remedy a defective title thereby achieving the maximum sale price. MCOB gives a degree of latitude to lenders in order to realise the best price possible.

If a repossessed property is sold by a lender and the proceeds are less than the amount of the customers' debt the lender must inform the customer as soon as possible after the sale of the mortgage shortfall debt (MCOB 13.6.3). Where a decision is made to recover the mortgage

shortfall debt the lender must notify the customer of this decision.  
(MCOB 13.6.4) Recovery of a mortgage shortfall is limited to those borrowers who have been notified of that shortfall within a period of six years from the date of sale.