

Housing Rights

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Consultation Response

Response to Minor FCA Handbook changes related to mortgage borrowers with a payment shortfall

July 2016

when everyone has a home

INTRODUCTION

Housing Rights is the leading provider of specialist housing advice in Northern Ireland. We provide advice, support and representation to our clients, helping them to overcome their housing issues and sustain their homes.

Since 2009, Housing Rights has delivered a Mortgage Debt Advice Service for homeowners in Northern Ireland. In 2015/16, this service dealt with 1,406 cases of mortgage debt. Our solicitors also represent borrowers in Court possession proceedings, including a strategic case involving lenders' treatment of arrears.¹ Housing Rights is therefore pleased to respond to the Financial Conduct Authority's consultation on two Handbook changes relating to mortgage borrowers with a payment shortfall.

Change 1: Amendments to MCOB 12.4.1BR

The first proposed change would amend Business Rule 12.4.1 (12.4.1BR) of the FCA's Mortgage Conduct of Business Rules.

Currently, 12.4.1BR is the following:

*"When a customer has a payment shortfall in respect of a regulated mortgage contract, a firm must ensure that any payments received from the customer are allocated first towards paying off the balance of the payment shortfall (excluding any interest or charges on that balance)."*²

The FCA state that they have 'recently identified divergent practices' among lenders when allocating payments from customers who are suffering a payment shortfall. They therefore propose to amend this rule, to clarify that 'no part of any payment received from the customer is allocated towards paying un-capitalised interest or charges incurred because of a payment shortfall, before the balance of the payment shortfall has been cleared.'³

The proposed amended wording of 12.4.1BR is:

"When a customer has a payment shortfall in respect of a regulated mortgage contract, a firm must ensure that no part of any payment received in respect of that contract is allocated towards paying interest or charges incurred because of a payment shortfall before the balance of the payment shortfall has been cleared."

¹ See <http://www.housingrights.org.uk/news/bank-scotland-held-account>

² Financial Conduct Authority (2016) 'Consultation Paper CP 16/16: Minor Handbook changes related to mortgage borrowers with a payment shortfall', p7

³ Ibid.

Housing Rights welcomes the intent of this amendment, which aims to ensure that when a customer has a payment shortfall, any payments made by that customer, in respect of their mortgage contract, will go towards clearing their payment shortfall before paying off any associated interests or charges.

Housing Rights acknowledges this change by the FCA, and would encourage the FCA, through its related guidance provisions⁴ and monitoring, to ensure that all firms comply with the amended rule – particularly those firms found to be employing “divergent practices” under the current rules.

Change 2: Amendment of Glossary definition of “payment shortfall”

The second proposed change would amend the Handbook Glossary’s definition of “payment shortfall”, to align with the policy intent of Change 1 above.

Currently, the Glossary definition of payment shortfall is as follows:

“The outstanding amount to be paid measured against the amount of payments which have become due during the term of a regulated mortgage contract or home purchase plan, including any arrears amount due.”⁵

The intention of this definition was to ensure that “payment shortfall”, as defined, would not include any outstanding amounts other than missed Contractual Monthly Instalments of capital and/or interest. However, the FCA propose to amend the definition, to more strongly clarify that any fees, charges, additional interest and/or ancillary items *do not* form part of a payment shortfall.

The proposed amended Glossary definition of payment shortfall is:

- a. “The total sum of periodic instalments of capital or interest (or both) that has become due under the terms of a *regulated mortgage contract* but which, in breach of those terms, remains unpaid.
- b. The total sum of periodic payments towards the purchase price or of rent (or both) that have become due under the terms of a *home purchase plan* but which, in breach of those terms, remains unpaid.”⁶

Housing Rights supports this change to the Glossary definition of “payment shortfall.” The amended definition is clear, and aligns with the amended 12.4.1BR to prevent the diversion of payments towards additional interest/charges/fees, before any payment shortfall has been cleared. Housing Rights would again encourage the FCA to ensure, through guidance and monitoring, to ensure that the letter and spirit of the amended definition is complied with by all firms.

For further information on this policy response, contact our Policy & Public Affairs Officer, Stephen Orme: (e) stepheno@housingrights.org.uk, (t) 028 9024 5640

⁴ Ibid.

⁵ Ibid., p8

⁶ Ibid.