



Law Society
of Scotland

Consultation Response

Financial Conduct Authority's Consultation Paper
(CP 23/13)- Strengthening Protections for Borrowers
in Financial Difficulty: Consumer Credit and
Mortgages

July 2023



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful, and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Consumer Law sub-committee welcomes the opportunity to consider and respond to the Financial Conduct Authority's Consultation Paper (CP 23/13) - Strengthening Protections for Borrowers in Financial Difficulty: Consumer Credit and Mortgages¹.

We have the following comments to put forward for consideration.

General Comments.

We consider that the FCA may wish to consider whether the desired consumer outcomes are better achieved by setting minimum standards in CONC/MCOBS or by issuing guidance to Firms on PRIN 2A expectations. The approach may vary depending on the subject matter.

Questions

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

a. CONC 5 & 7?

Yes, we agree.

b. MCOB 13?

¹ [CP23/13: Strengthening protections for borrowers in financial difficulty: Consumer credit and mortgages \(fca.org.uk\)](https://www.fca.org.uk/publications/consultation/cp2313)

Yes, we agree. We also suggest that firms need to clearly communicate the option of support if this is needed when a consumer takes out the product and with updates on the account, for example on mortgage statements.

We support a pro-active approach in terms of communication to make sure that consumers know that support options are available if they need them.

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

a. in CONC 7?

Yes, we agree.

b. in MCOB 13?

Yes, we agree.

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

a. for CONC 7?

Yes, we agree.

b. for MCOB 13?

Yes, we agree.

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

a. CONC 7.3.5G & CONC 5D 3.3(4)G?

Yes, we agree. It is helpful that the examples are expressly stated to be "not exhaustive".

b. MCOB 13.3.4AR?

Please see our comments above.

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

a. to CONC at CONC 7.3.13A, CONC 5D 3.9G and CONC 5D 3.3G(7)?

Yes, we agree.

b. to MCOB 13.3.4C?

Yes, we agree. We note the content in paragraph 3.26 where firms should "offer to engage with customers through a range of channels, changing the channel if necessary to enable the customer to engage with the firm effectively". We suggest that firms need to make sure they have a preferred channel and a back-up channel on record so that if the customer's circumstances change unexpectedly, the chances of concluding erroneously that the customer has not engaged are reduced. For example, if the customer's preferred channel is via letter but the customer has been hospitalised, they may not be able to engage.

We also note the content in paragraph 3.26, regarding the proposal for mortgages, where firms should have the range of options to help customers set out clearly, including in a prominent location on the firm's website. We support this and suggest that the options and information on firms' websites, should be in plain English.

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

a. in CONC 7.3.7A?

Yes. This builds on the theme from the tailored support guidance, and we support that consumers are signposted to help and assistance on money advice and debt advice.

b. in MCOB 13.3.2AR?

Please see our comments above.

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

a. in CONC 7.3.13A and CONC 5D?

Yes, we agree. We note the content in paragraph 3.42 on whether customers should be given a reasonable period to consider the implications of an arrangement before it is agreed and if so, what period is reasonable. We support that consumers are given a reasonable period to consider implications, and we suggest a minimum of a two-week period.

We also note paragraph 3.36 regarding the proposal for firms to “communicate information to them (consumers) in a way which is clear, fair and not misleading”. We support this and suggest that the information should be in plain English.

We also consider the proposals at paragraph 3.37, where firms should “make available to customers timely, clear and understandable information which takes into account the individual characteristics of the customer and is sufficient to enable the customer to understand their financial position in relation to their debt, including the potential impact of any forbearance or due consideration on their overall balance and any implications for the customer’s credit file”, that the information should be in plain English.

b. n MCOB 13.3.4AR(2)? 29

Yes, we agree.

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

a. in CONC?

Yes, we agree.

b. in MCOB?

Yes, we agree.

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

Yes, we agree.

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

Yes, subject to seeing the guidance.

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

Yes, subject to seeing the guidance.

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

This is an existing requirement, however we agree with your proposals, subject to seeing the guidance.

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

Yes, subject to seeing the guidance.

Q14: Do you agree with our proposed guidance for income and expenditure assessments on clear policies, assessing whether arrangements are appropriate and sustainable and making available to the customer a record of any income and expenditure assessment made to allow them to share with other lenders and debt advice providers?

Yes, subject to seeing the guidance.

Q15: Do you agree with our proposals on repossessions?

Yes, we agree with your proposals, and clarification of the procedure would be welcomed and we would welcome viewing the guidance as well.

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

Yes, we agree. We note paragraph 3.63 regarding voluntary termination and that “a firm should inform the customer in good time of that right, providing information that is clear, fair and not misleading to help the customer decide how to proceed”. We support this and suggest that the information should be in plain English.

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

Yes, we agree, and we consider that anything to clarify APRs is welcomed, to improve protecting consumers and the public.

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

We have no comments.

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

Yes, we agree.

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

We have no comments.

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

We have no comments.

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

We have no comments.

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

Yes, we agree.

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

Yes, we agree.

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

Yes, we agree.

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

Yes, we agree.

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

We lack information on current industry practices to usefully comment on this.

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

We lack information on current industry practices to usefully comment on this.

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

We have no comments.

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

a. MCOB 14?

We have no comments.

b. MCOB 15?

We have no comments.

For further information, please contact:

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