

Chapter 2

Conduct of business standards: general

2.9 Restriction on marketing or providing an optional product for which a fee is payable

2.9.1

R

- (1) A *firm* must not enter into an agreement with a *customer* under which a charge is, or may become, payable for an optional additional product unless the *customer* has actively elected to obtain that specific product.
- (2) A *firm* must not impose a charge on a *customer* for an optional additional product under an agreement entered into on or after 1 April 2016 unless the *customer* actively elected to obtain that specific product before becoming bound to pay the charge.
- (3) A *firm* must not invite or induce a *customer* to obtain an optional additional product for which a charge will be, or may become, payable if the *firm* knows or has reasonable cause to suspect that:
 - (a) a contravention of (1) or (2) will take place with respect to the product; or
 - (b) the *person* supplying the optional additional product will act in a way that would contravene (1) or (2) if that *person* were a *firm*.
- (4) An omission by a *customer* is not to be regarded as an active election for the purposes of this *rule*.
- (5) It is immaterial for the purposes of (3) whether or not the *firm* would or might be a party to the agreement for the optional additional product.
- (6) A charge includes a financial consideration of any kind whether payable to the *firm* or to any other person.
- (7) An optional additional product is a good, service or right of any description (whether or not financial in nature) that a *customer* may obtain (or not, as the case may be) at his or her election in connection with or alongside entering into a *home finance transaction*.
- (8)
 - (a) Where a *customer* is required to obtain a specific additional product in order to enter into the *home finance transaction*, the product is not an optional additional product.
 - (b) Where a *customer* is required to obtain a particular category of additional product (for example, a particular type of insurance) in order to enter into the *home finance transaction*, and the

customer is given a choice as to the seller or supplier from whom to obtain the product or which specific product to obtain, the product is an optional additional product.

(9) It is immaterial for the purposes of (7) and (8) whether the optional additional product is obtained from the *firm* or from another *person*.

(10) (a) If, under the terms and conditions of an optional additional product, there is to be an automatic renewal of the agreement on substantially the same terms, it suffices for the purposes of (1) to (3) if the *customer* actively elected before entering into the initial agreement or a preceding renewal to obtain the product.

(b) An automatic renewal of the agreement is not to be regarded as being on substantially the same terms if, following the renewal, a charge will or may become payable for the optional additional product for the first time (in which case, (1) to (3) apply at the time of the renewal).

(c) Except as set out in (b), changes in the level of charges for an optional additional product are to be disregarded in determining whether an automatic renewal of an agreement is on substantially the same terms.

(11) A *customer* may make an active election for the purposes of this *rule* through an intermediary in the sales process or through a *person* acting on behalf of the *firm*.

2.9.2 **G** An example of an omission by a *customer* which is not to be regarded as an active election is the failure by the *customer* to change a default option such as a pre-ticked box on a website.

2.9.3 **G** *Firms* are reminded that a similar prohibition on opt-out selling of add-on products is imposed by The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 in relation to optional additional agreements where the main sale is not a financial service or product.

2.9.4 **G** *Firms* are reminded of the guidance on appointed representatives set out in ■ MCOB 1.5G.