

Chapter 4

Advising and selling standards



4.10 Home purchase plans: sales standards

Scope of service provided

4.10.1 **R** [deleted]

Initial disclosure requirements

4.10.2 **R** [deleted]

4.10.3 **G** [deleted]

4.10.3A **R** A firm must comply with the rules in **MCOB 4.4A** as if the references in those rules to regulated mortgage contracts and mortgage lenders were to, respectively, home purchase plans and home purchase providers.

4.10.3B **R** For the purposes of **MCOB 4.4A.2R (1)** there is one relevant market for home purchase plans.

4.10.4 **G** The guidance on initial disclosure requirements in **MCOB 4.4A** may be relevant; in this context, that guidance should be read using home purchase plan terminology instead of the equivalent regulated mortgage contract terminology, where appropriate.

Additional requirements for distance home purchase mediation contracts with retail customers

Note: The rules regarding additional disclosure requirements for, and cancellation of, distance home purchase mediation contracts are set out in **MCOB 4.5** and **MCOB 4.6** respectively.

Advised sales: suitability

4.10.5 **G** [deleted]

4.10.5A **R** If a firm gives advice to a particular customer to enter into a home purchase plan, or to vary an existing home purchase plan, it must take reasonable steps to ensure that the home purchase plan is, or after the variation will be, suitable for that customer.

- 4.10.5B** **R** In **■ MCOB 4.10**, a reference to advice to enter into a *home purchase plan* is to be read as including advice to vary an existing *home purchase plan*.
- 4.10.5C** **G** A *firm* should take reasonable steps to obtain from a *customer* all information likely to be relevant for the purposes of **■ MCOB 4.10.5A R** to **■ MCOB 4.10.9A R**.
- 4.10.5D** **R** For the purposes of **■ MCOB 4.10.5A R**:
- (1) a *home purchase plan* will not be suitable for a *customer* unless the *home purchase plan* is appropriate to the needs and circumstances of the *customer*;
 - (2) a *firm* must base its determination of whether a *home purchase plan* is appropriate to a *customer's* needs and circumstances on the facts disclosed by the *customer* and other relevant facts about the *customer* of which the *firm* is or should reasonably be aware;
 - (3) no advice must be given to a *customer* to enter into a *home purchase plan* if there is no *home purchase plan* which is suitable from the product range offered by the *firm*;
 - (4) if a *home purchase provider* is dealing with an existing *customer* in arrears, with a *payment shortfall* or otherwise in breach of their *home purchase plan* and has concluded that there is no suitable replacement *home purchase plan*, the *firm* must nonetheless have regard to **■ MCOB 13.3**; and
 - (5) the reasonable steps in that *rule* include considering why it is not appropriate for the *customer* to take out a *regulated mortgage contract*.
- 4.10.6** **R** [deleted]
- 4.10.6A** **G** **■ MCOB 4.10.5DR (3)** has the effect that a *firm* cannot recommend the 'least worst' *home purchase plan* where the *firm* does not have access to *home purchase plan* products appropriate to the *customer's* needs and circumstances.
- 4.10.7** **G** *Firms* may wish to consider the following provisions:
- (1) the *rule* at **■ MCOB 4.7A.6 R** on the *customer's* needs and circumstances, as if it were *guidance* and to the extent applicable to *home purchase plans*; and
 - (2) the *guidance* at **■ MCOB 4.7A.1G (2)**, **■ MCOB 4.7A.21 G** and **■ MCOB 4.7A.23 G** (Other considerations when advising);
in each case using *home purchase plan* terminology instead of the equivalent *regulated mortgage contract* terminology, where appropriate.

4.10.8 **R** [deleted]

4.10.9 **G** [deleted]

Rejected recommendations

4.10.9A **R** If a *customer* has rejected the advice given by a *firm* and instead requested an *execution-only sale* of a *home purchase plan*, the *firm* may enter into or arrange that *execution-only sale* provided the requirements in **■ MCOB 4.8A.14 R** (as applied in relation to *home purchase plans* by **■ MCOB 4.10.9B R** and modified for *home purchase plans* by **■ MCOB 4.10.9D R**) are satisfied.

Execution-only sales

4.10.9B **R** **■ MCOB 4.8A** applies to a *firm* as if the references in that section to *regulated mortgage contracts* and *mortgage lenders* were to, respectively, *home purchase plans* and *home purchase providers*, but **■ MCOB 4.8A.14R (1)** and **■ (2)** are modified in relation to *home purchase plans* as set out in **■ MCOB 4.10.9D R**.

4.10.9C **G** As provided in **■ MCOB 4.1.2B R**, **■ MCOB 4.8A** only applies to *home purchase providers* in relation to entering into *home purchase plans* where there is no *firm* which is *arranging* the transaction and to which **■ MCOB 4.8A** applies.

4.10.9D **R** For *home purchase plans*, the following items of information replace those set out in **■ MCOB 4.8A.14R (1)** and **■ (2)**:

- (1) the name of the *home purchase provider*;
- (2) the length of the term required by the *customer*; and
- (3) the sum required from the *home purchase provider*.

Risks and features statement and tariff of charges

4.10.10 **R** A *firm* must, before *advising* a *customer* to enter into, or entering into or *arranging* a *home purchase plan* as an *execution-only sale*, ensure that the *customer* is, or has been, provided with an appropriate risks and features statement about that plan.

4.10.11 **R** A risks and features statement need not be personalised to the *customer's* circumstances but must:

- (1) include the Key facts logo in a prominent position at the top of the statement;
- (2) state that the *FCA* requires a *firm* to provide the statement;
- (3) state that mortgages are available and that the *customer* should think carefully about the product appropriate to his needs;

- (4) describe the significant features of the plan, including:
 - (a) how the *home purchase plan* works;
 - (b) the nature of the *customer's* commitment;
 - (c) when and how a *customer's* commitment is reviewed;
 - (d) any significant restrictions of the plan; and
 - (e) the charges that a *customer* may incur under the plan, including the reason for, and amount of, each charge, when they are payable, whether they will be reimbursed and, if so, when;
- (5) describe the risks associated with the plan, including:
 - (a) the risks to the *customer* if he fails to keep up repayments and the circumstances in which this might occur; and
 - (b) risks to the *customer* of the *home purchase provider failing or disposing of any of its obligations or rights (including its interest in the property) to a third party (taking into account steps that will be taken by the home purchase provider to mitigate such risks); and*
- (6) state the importance of obtaining independent legal advice.

4.10.12 R A firm may omit details of the charges that a *customer* may incur under a *home purchase plan* from the risks and features statement if they are included in a separate *tariff of charges* provided to the *customer* at the same time.

Record keeping.....

4.10.13 R (1) A firm must make and retain a record:

- (a) of the *customer* information, including that relating to the *customer's* needs and circumstances that it has obtained for the purposes of ■ MCOB 4.10.5D R;
- (b) that explains why the *firm* has concluded that any advice given to a *customer* complies with ■ MCOB 4.10.5A R and satisfies the suitability requirement in ■ MCOB 4.10.5DR (1); and
- (c) of any advice which the *customer* has rejected, including the reasons why it was rejected and details of the *home purchase plan* which the customer has proceeded with as an *execution-only sale*.

(2) The records in (1) must be retained for a minimum of three years from the date on which the advice was given.

4.10.14 G Firms should note the record-keeping requirements in ■ MCOB 4.8A in relation to *execution-only sales* which are imposed in relation to *home purchase plans* by ■ MCOB 4.10.9B R.