

## Chapter 4

# Advising and selling standards

**4.6 Cancellation of distance mortgage mediation contracts, distance home purchase mediation contracts and distance regulated sale and rent back mediation contracts**

**4.6.1** **G** A *consumer* has no right to cancel a *home finance transaction* concluded with a *firm* but may have a right to cancel a *distance contract* concluded with a *mortgage intermediary*, a *home purchase intermediary* or a *SRB intermediary* for the provision of his services. Whether a *mortgage intermediary*, a *home purchase intermediary* or a *SRB intermediary* concludes a *distance mortgage mediation contract*, a *distance home purchase mediation contract* or a *distance regulated sale and rent back mediation contract* with a *consumer* will depend on the circumstances. For example, an intermediary may not, in *advising* on or *arranging* a *regulated mortgage contract*, *home purchase plan* or *regulated sale and rent back agreement*, act contractually on behalf of, or for, the *customer*. In such circumstances, no *distance mediation contract* will arise for the *firm's* services, and therefore no right to cancel. If there is a contract between the *customer* and the *firm*, however, and therefore there is a right to cancel, the *firm* is required by ■ MCOB 4.5.2 R(1) to provide the information in ■ MCOB 4 Annex 3(5).

**4.6.2** **G** The information provided in accordance with ■ MCOB 4 Annex 3(5) should be sufficiently clear, prominent and informative to enable the *consumer* to understand the right to cancel.

**4.6.3** **G** Where the notice of the right to cancel forms part of another document, or is one of a number of documents sent to the *consumer* at the same time, a *firm* should ensure that the presence of the notice of the right to cancel is drawn to the *consumer's* attention.

**Cancellation period**

- 4.6.4** **R**
- (1) A *consumer* has a right to cancel a *distance mortgage mediation contract*, a *distance home purchase mediation contract* or a *distance regulated sale and rent back mediation contract* in accordance with this section.
  - (2) The right to cancel must be exercised within 14 days beginning on the later of:
    - (a) the day of the conclusion of the contract; or

- (b) the day on which the *consumer* receives the contractual terms and conditions and other information required by ■ MCOB 4.4 and ■ MCOB 4.5.

**Exercising the right to cancel**

**4.6.5** **R** A *consumer* who has a right to cancel a *distance mortgage mediation contract*, a *distance home purchase mediation contract* or a *distance regulated sale and rent back mediation contract* may, without giving any reason, cancel the contract by serving notice on the *firm*, before the expiry of the cancellation period in ■ MCOB 4.6.4 R either:

- (1) by serving on, or otherwise sending by post, notice to the *firm's* last known address, addressed to the *firm*, its *appointed representative* or on any agent of the *firm* with authority to accept notice on the *firm's* behalf; or
- (2) in accordance with any other practical instructions for exercising that right provided to the *consumer* in accordance with ■ MCOB 4 Annex 3(5).

**4.6.6** **R** Where the notice of cancellation is in a *durable medium* and is served in accordance with ■ MCOB 4.6.5 R, it must be treated as being served on the *firm* on the date it is despatched by the *consumer*.

**4.6.7** **G** In the event of any dispute, unless there is clear written evidence to the contrary, the *firm* should treat the date cited by the *consumer* as being the date when notice was given, posted or otherwise sent.

**Effects of cancellation**

**4.6.8** **R** By exercising a right to cancel under ■ MCOB 4.6.4 R the *consumer* withdraws from the contract and the entire contract is terminated.

**4.6.9** **G** Regulation 11 (Automatic cancellation of an attached distance contract) of the *Distance Marketing Regulations*, has the effect that when notice of cancellation is given in relation to a contract, that notice also operates to cancel any attached contract, which is also a distance financial services contract. An example of such an attached contract might be a distance non-investment insurance contract.

**4.6.10** **R** When a *consumer* exercises a right to cancel under ■ MCOB 4.6.4 R:

- (1) the *firm* must:
  - (a) pay to the *consumer* without delay, and no later than 30 days after the date on which the *firm* received notice of cancellation from him, any sums which he has paid to or for the benefit of the *firm* in connection with the contract (including sums paid by the *consumer* to agents of the *firm*) except for the amount referred to in (b);
  - (b) subject to (c), the *firm* is permitted to require the *consumer* to pay for the services it has actually provided in connection with

the contract; the amount payable, however, must be in accordance with the sums which the *consumer* agreed to pay and must not:

- (i) exceed an amount which is in proportion to the extent of the service already provided to the *consumer* by the *firm*; and
  - (ii) be such that it could be construed as a penalty;
- (c) sub-paragraph (b) applies only if:
- (i) where performance of the contract has commenced before expiry of the cancellation period, this was requested by the *consumer*; and
  - (ii) the *firm* can demonstrate that the *consumer* was provided with details of the amount which he may be required to pay if exercising his right to cancel in accordance with **■ MCOB 4 Annex 3(5)**.

- (2) The *firm* is entitled to receive without delay, and no later than 30 days after the date on which the *consumer* posted or otherwise sent notice of cancellation to the *firm* any property that became the *consumer's* under the contract and any sums payable to the *firm* under (1)(b).

### **Record keeping**

4.6.11

**R**

Where notice of cancellation has been served on a *firm* (or its *appointed representative* or agent), the *firm* must make and retain a record (which includes a copy of any receipt of notice issued to the *consumer* and the *consumer's* original notice instructions) for three years from the date when the *firm* first became aware that notice of cancellation had been served.