

Chapter 4

Advising and selling standards

4.7A Advised sales

- 4.7A.1** G
- (1) ■ MCOB 4.7A sets out standards to be observed by *firms* when *advising* a particular *customer* on *regulated mortgage contracts*.
 - (2) The rules at ■ MCOB 4.8A require *firms* which are selling *regulated mortgage contracts* to, or entering into variations of existing *regulated mortgage contracts* with, certain types of vulnerable *customer*, to provide advice to them.
 - (3) The *rules* at ■ MCOB 4.8A also provide that advice must be given wherever the sales process involves spoken or other interactive dialogue (except for *high net worth mortgage customers*, *professional customers* and loans solely for a business purpose), unless that spoken or other interactive dialogue is of a sort described by ■ MCOB 4.8A.7AR. They do not prohibit the giving of pre-contract or preliminary information which does not amount to advice to the particular *customer*, but mean that advice must be given before a *firm* enters into or *arranges a regulated mortgage contract*, or variation of such contract, unless (where the dialogue is not of a sort described by ■ MCOB 4.8A.7AR) the requirements of the various exceptions in ■ MCOB 4.8A are satisfied. *Firms* may wish to refer to PERG (particularly ■ PERG 4.6) for guidance on the regulatory perimeter in relation to *advising on home finance transactions*.
 - (4) The *rules* at ■ MCOB 4.8A provide for an exception which permits certain *execution-only sales* which do not involve additional borrowing.

Suitability

- 4.7A.2** R If a *firm* gives advice to a particular *customer* to enter into a *regulated mortgage contract*, or to vary an existing *regulated mortgage contract*, it must take reasonable steps to ensure that the *regulated mortgage contract* is, or after the variation will be, suitable for that *customer*.
- 4.7A.3** R In ■ MCOB 4.7A, a reference to advice to enter into a *regulated mortgage contract* is to be read as including advice to vary an existing *regulated mortgage contract*.
- 4.7A.4** G
- (1) A *firm* should take reasonable steps to obtain from a *customer* all information likely to be relevant for the purposes of ■ MCOB 4.7A.

- (2) For the purposes of ■ MCOB 4.7A.2 R, if for any reason a *customer* rejects (in whole or in part) advice given by a *firm*, the *firm* is not precluded from advising him to enter into a different *regulated mortgage contract* (in accordance with the requirements of ■ MCOB 4.7A) provided the *firm* has taken reasonable steps to ensure that that different contract is suitable for the *customer*.

4.7A.4A **G** *Firms* are only obliged to assess the suitability of a *regulated mortgage contract* or a *shared equity credit agreement* where this forms part of the transaction between the *consumer* and the *firm*.

4.7A.5 **R** For the purposes of ■ MCOB 4.7A.2 R:

- (1) a *regulated mortgage contract* will not be suitable for a *customer* unless the *regulated mortgage contract* is appropriate to the needs and circumstances of the *customer*;
- (2) a *firm* must base its determination of whether a *regulated mortgage contract* 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 *regulated mortgage contract* if there is no *regulated mortgage contract* which is suitable from the product range offered by the *firm*; and
- (4) if a *mortgage lender* is dealing with an existing *customer* with a *payment shortfall* and has concluded that there is no suitable replacement *regulated mortgage contract*, the *firm* must nonetheless have regard to ■ MCOB 13.3.

4.7A.6 **R** When a *firm* assesses whether the *regulated mortgage contract* is appropriate to the needs and circumstances of the *customer* for the purposes of ■ MCOB 4.7A.5R (1), the factors it must consider include the following, insofar as relevant:

- (1) whether the *customer's* requirements appear to be within the *mortgage lender's* known eligibility criteria for the *regulated mortgage contract*;
- (2) whether it is appropriate for the *customer* to have an *interest-only mortgage*, a *repayment mortgage*, or a combination of the two;
- (3) whether it is appropriate for the *customer* to take out a *regulated mortgage contract* for a particular term;
- (4) whether it is appropriate for the *customer* to have stability in the amount of required payments, especially having regard to the impact on the *customer* of significant interest rate changes in the future;
- (5) whether it is appropriate for the *customer* to have their payments minimised at the outset;
- (6) whether it is appropriate for the *customer* to make early repayments;

- (7) whether it is appropriate for the *customer* to have any other features of a *regulated mortgage contract*;
- (8) whether the *regulated mortgage contract* is appropriate, based on the information provided by the *customer* as to his credit history; and
- (9) whether it is appropriate for the *customer* to pay any fees or charges in relation to the *regulated mortgage contract* up front, rather than adding them to the sum advanced (see also ■ MCOB 4.6A.2 R).

4.7A.7 **G** *Firms* are reminded that the list in ■ MCOB 4.7A.6 R is not exhaustive. For certain *customers* there may be additional considerations to explore beyond those described in that rule; for example, in the case of a business loan or a *regulated mortgage contract* for a *high net worth mortgage customer*.

4.7A.8 **G** Examples of criteria in ■ MCOB 4.7A.6R (1) are: the expected affordability criteria of the *mortgage lender*; and whether the *mortgage lender* will lend in respect of properties of a non-standard construction.

Interest-only

4.7A.9 **R** In relation to ■ MCOB 4.7A.6R (2), where a *firm* has identified an *interest-only mortgage* as appropriate for a *customer*, the *firm* must ensure that the *customer* is aware that he will have to demonstrate to the *mortgage lender* that he will have in place a clearly understood and credible *repayment strategy*, in order for the *mortgage lender* to be able to satisfy ■ MCOB 11.6.41R (1).

4.7A.10 **G** ■ MCOB 4.7A.9 R does not require a *firm* to *advise* the *customer* on a credible *repayment strategy* or assess the adequacy of a *customer's* existing *repayment strategy*.

Retirement interest-only mortgages

- 4.7A.10A **R**
- (1) In considering whether a *retirement interest-only mortgage* that will be used to release capital is appropriate to the needs and circumstances of the *customer* for the purposes of ■ MCOB 4.7A.2R, a *firm* must consider, in addition to the factors set out in ■ MCOB 4.7A.6R, whether the benefits to the *customer* outweigh any adverse effect on:
 - (a) the *customer's* entitlement (if any) to means-tested benefits; and
 - (b) the *customer's* tax position.
 - (2) In considering the factors set out in ■ MCOB 4.7A.10AR(1), where a *firm* has insufficient knowledge of the *customer's* means-tested benefits or tax allowances to reach a conclusion, the *firm* must refer the *customer* to an appropriate source or sources such as the Pension Service, HM Revenue and Customs or a Citizens Advice Bureau (or other similar agency) to establish the required information.
 - (3) If a *customer* declines to seek further information on means-tested benefits, tax allowances or the scope for local authority (or other) grants, a *firm* can advise the *customer* (in accordance with the

remaining requirements of this chapter) to enter into a *retirement interest-only mortgage* where there is a *retirement interest-only mortgage* that is appropriate to the needs and circumstances of the *customer*; but must confirm to the *customer*, in a *durable medium*, the basis on which the advice has been given.

Bridging loans

4.7A.11 **R** When a *firm* assesses whether a *bridging loan* is appropriate to the needs and circumstances of the *customer* for the purposes of **■ MCOB 4.7A.5R (1)**, the factors it must consider include, in addition to the factors listed at **■ MCOB 4.7A.6 R**:

- (1) whether it is appropriate for the *customer* to make regular payments; and
- (2) whether it is appropriate for the *customer* to access finance quickly.

4.7A.12 **R** Where a *firm* has identified a *bridging loan* as appropriate for a *customer*, the *firm* must ensure that the *customer* is aware that he will have to demonstrate to the *mortgage lender* that he has a clearly understood and credible *repayment strategy* in place.

4.7A.13 **R** Where a *firm* is considering giving advice to a *customer* to enter into a *bridging loan*, the reasonable steps in **■ MCOB 4.7A.2 R** include considering why it is not appropriate for the *customer* to take out a *regulated mortgage contract* which is not a *bridging loan*.

4.7A.14 **E** If a *firm* advises a *customer* to enter into a *regulated mortgage contract* with a term of a particular length so that **■ MCOB 4.7A.11 R** to **■ MCOB 4.7A.13 R** do not apply because the *regulated mortgage contract* does not fall within the definition of a *bridging loan*, that advice may be relied on as tending to show contravention of **■ MCOB 2.5A.1 R** (The customer's best interests).

Shared equity

4.7A.14A **R** When a *firm* assesses whether a *shared equity credit agreement* is appropriate to the needs and circumstances of the *customer* for the purposes of **■ MCOB 4.7A.5R (1)** it must consider, in addition to the factors listed in **■ MCOB 4.7A.6 R**, whether it is appropriate for the *customer* to:

- (1) take out the *shared equity credit agreement* for a particular term, taking into account the *customer's* intentions about the repayment of that *shared equity credit agreement* and the term of the *customer's* associated *first charge regulated mortgage contract*;
- (2) have flexibility over the payment of interest;
- (3) have flexibility over the repayment of capital; and
- (4) purchase a property by using his own resources, rather than by borrowing under the *shared equity credit agreement*.

Debt consolidation

4.7A.15 **R** When a *firm* advises a *customer* in relation to entering into a *regulated mortgage contract* where the main purpose for doing so is the consolidation of existing debts by the *customer*, in addition to the factors at **■ MCOB 4.7A.6 R**, it must also take account of the following, where relevant, in assessing whether the *regulated mortgage contract* is suitable for the *customer*:

- (1) the costs associated with increasing the period over which a debt is to be repaid;
- (2) whether it is appropriate for the *customer* to secure a previously unsecured loan; and
- (3) where the *customer* is known to have payment difficulties, whether it would be appropriate for the *customer* to negotiate an arrangement with his creditors rather than to take out a *regulated mortgage contract*.

4.7A.16 **E** An attempt by the *firm* to misdescribe the *customer's* purpose or to encourage the *customer* to tailor the amount he wishes to borrow so that **■ MCOB 4.7A.15 R** does not apply may be relied on as tending to show contravention of **■ MCOB 2.5A.1 R** (The customer's best interests).

Further advances

4.7A.17 **R**

4.7A.18 **G**

Other considerations when advising

4.7A.19 **R** When *advising a customer* on the suitability of a *regulated mortgage contract*, a *firm* must explain to the *customer* that the assessment of whether the *regulated mortgage contract* is appropriate to his needs and circumstances is based only on the *customer's* current circumstances and any reasonably foreseeable changes to those.

4.7A.20 **G** Different considerations apply when giving advice to a *customer* with a *payment shortfall*. For example, the circumstances of the *customer* may mean that, viewed as a new transaction, a *customer* should not be advised to enter into a *regulated mortgage contract*. In those cases, a *firm* may still be able to give advice to that *customer* where the *regulated mortgage contract* concerned is, in the circumstances, a more suitable one than the *customer's* existing *regulated mortgage contract*.

4.7A.21 **G** In complying with **■ MCOB 4.7A.5R (1)** a *firm* is not required to consider whether it would be preferable for the *customer* to:

- (1) purchase a property by using his own resources, rather than by borrowing under a *regulated mortgage contract* (save for where the

customer is seeking to enter into a *shared equity credit agreement* (see ■ MCOB 4.7A.14AR (4); or

- (2) rent a property, rather than purchase one; or
- (3) delay entering into a *regulated mortgage contract* until a later date (on the grounds that property prices would have fallen in the intervening period, or that the interest rate in relation to the *regulated mortgage contract* may be lower, or both).

4.7A.22 G ■ MCOB 4.7A.5R (3) means that where the advice is not provided on an unlimited range of products from across the relevant market, the assessment of suitability should not be limited to the types of *regulated mortgage contracts* which the *firm* offers. A *firm* cannot recommend the 'least worst' *regulated mortgage contract* where the *firm* does not have access to products appropriate to the *customer's* needs and circumstances. This means, for example, that a *firm* dealing solely in the credit-impaired market should not recommend one of these *regulated mortgage contracts* if approached for advice by a *customer* who is not a *credit-impaired customer*.

4.7A.23 G A *firm* may generally rely on any information provided by the *customer* for the purposes of ■ MCOB 4.7A.5R (1) unless, taking a common sense view of this information, it has reason to doubt it.

Cost of the mortgage

4.7A.23A R

- (1) This *rule* applies if the *firm's* product range includes more than one *regulated mortgage contract* that is appropriate to the needs and circumstances of the *customer* (see ■ MCOB 4.7A.5R and ■ 4.7A.6R).
- (2) If:
 - (a) the *firm* advises the *customer* to enter into a particular *regulated mortgage contract*; and
 - (b) that *regulated mortgage contract* is not the cheapest of those contracts in the *firm's* product range which are appropriate to the needs and circumstances of the *customer*;

the *firm* must explain to the *customer* why it is advising the *customer* to enter into that *regulated mortgage contract* rather than any other cheaper *regulated mortgage contract* in the *firm's* product range which is appropriate to the needs and circumstances of the *customer*.
- (3) For the purposes of this *rule*:
 - (a) one *regulated mortgage contract* ("contract A") is cheaper than another ("contract B") if the total amount payable under contract A in respect of the relevant period is less than the total amount payable under contract B in respect of the relevant period;
 - (b) the "total amount payable" means:
 - (i) the aggregated monthly payments; and
 - (ii) includes any product fee or arrangement fee if the *customer* proposes to pay that fee directly rather than add it to the sum advanced under the contract (and such a fee must be

treated in the same way for contract A and contract B when comparing the two contracts);

- (c) the “relevant period” means:
 - (i) any discounted or introductory period under contract A; or
 - (ii) the term of contract A; and
- (d) monthly payments should be calculated on the assumption that there is no variation to the interest rate that would apply if the *regulated mortgage contract* were to be entered into immediately, unless the contract expressly varies the interest rate (in which case, the monthly payments should be calculated by reference to rates specified in the contract in relation to the relevant periods).

Rejected advice

4.7A.24

R

If a *customer* has rejected the advice given by a *firm* and instead wishes to enter into a different *regulated mortgage contract* as an *execution-only sale*, the *firm* may enter into or *arrange* that contract as an *execution-only sale* provided the requirements in ■ MCOB 4.8A.14 R are satisfied.

Record keeping

4.7A.25

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 4.7A;
 - (b) that explains why the *firm* has concluded that any advice given to a *customer* complies with ■ MCOB 4.7A.2 R and satisfies the suitability requirement in ■ MCOB 4.7A.5R (1);
 - (c) of the *customer's* positive choice in ■ MCOB 4.6A.2 R (Rolling up of fees or charges into loan) where applicable; and
 - (d) of the explanation given under ■ MCOB 4.7A.23AR where applicable.
- (2) The records in (1) must be retained for a minimum of three years from the date on which the advice or explanation was given or, in the case of (1) (c), the making of the choice.