

## Chapter 5

# Pre-application disclosure

## 5.5 Provision of illustrations

### Timing

#### 5.5.1

**R**

- (1) A *firm* must provide the *customer* with an *illustration* for a *regulated mortgage contract* before the *customer* submits an application for that particular *regulated mortgage contract* to a *mortgage lender*, unless an *illustration* for that particular *regulated mortgage contract* has already been provided.
- (2) Except in the circumstances in ■ MCOB 5.5.1A R, a *firm* must provide the *customer* with an *illustration* for a *regulated mortgage contract* when any of the following occurs, unless an *illustration* for that *regulated mortgage contract* has already been provided:
  - (a) the *firm* advises the particular *customer* to enter into that *regulated mortgage contract*, in which case an *illustration* must be provided at the point the advice is given, unless the advice is given by telephone, in which case the *firm* must provide an *illustration* within 5 *business days*; or
  - (b) [deleted]
  - (c) [deleted]
  - (d) the *customer* requests an *illustration* for that *regulated mortgage contract*, unless the *firm* is aware that it is unable to offer that *regulated mortgage contract* to him; or
  - (e) as part of an *execution-only sale* (or potential *execution-only sale*) the *customer* has provided the *firm* with the information in ■ MCOB 4.8A.14R (1) to ■ MCOB 4.8A.14R (3) to indicate which *regulated mortgage contract* he wishes to enter into; or
  - (f) as part of an *execution-only sale* (or potential *execution-only sale*), a *high net worth mortgage customer* or a *customer* who is entering into the *regulated mortgage contract* solely for a business purpose, has indicated his intention to submit an application for that *regulated mortgage contract*.
- (3) Subject to ■ MCOB 5.5.4 R, the *firm* may comply with (1) and (2) by providing an *offer document* containing an *illustration*, if this can be done as quickly as providing an *illustration*.

#### 5.5.1A

**R**

A *firm* need not provide an *illustration*:

- (1) in relation to a *direct deal*;

(2) if the *customer* refuses to disclose key information (for example, in a telephone conversation, his name or a communication address) or where the *customer* is not interested in pursuing the enquiry; or

(3) if the *firm* does not wish to do business with the *customer*.

**5.5.1B** **R** If the *firm* chooses not to give an *illustration* in the circumstances set out in **■ MCOB 5.5.1AR (1)**, where it has given advice on a *direct deal*, the *firm* must give the *customer* a written record of the advice.

**5.5.1C** **R** If, notwithstanding **■ MCOB 5.5.1AR (1)**, a *firm* chooses to give an *illustration* in relation to a *direct deal*, it remains subject to MCOB 3A.2.1R(2) (fair, clear and not misleading communications).

**5.5.1D** **G** [deleted]

**5.5.1E** **G** In the circumstances in **■ MCOB 5.5.1AR (2)**, the *rule* in **■ MCOB 5.5.1 R (1)** will mean that the *customer* may not make an application for a *regulated mortgage contract* as an *illustration* has not been provided.

**5.5.2** **G** The effect of the requirements at **■ MCOB 5.3.1 R** and **■ MCOB 5.5.1 R(1)** is that if a *customer's* application to enter into a *regulated mortgage contract* with a *mortgage lender*, made via a *mortgage intermediary*, is subsequently passed by that *mortgage intermediary* to another *mortgage lender*, then the *mortgage intermediary* must ensure that the application is amended and the *customer* is provided with an *illustration* for the other *mortgage lender's* *regulated mortgage contract* before the application is passed to the other *mortgage lender*.

**5.5.3** **G** If a *firm* chooses to issue an *offer document* in place of an *illustration* in accordance with **■ MCOB 5.5.1 R(3)**, it will need to comply with **■ MCOB 6.4** (Content of the offer document), and in particular with **■ MCOB 6.6** (Offer documents in place of illustrations).

**5.5.4** **R** A *firm* must not undertake any action that commits the *customer* to an application (including accepting product-related fees in relation to the *regulated mortgage contract* concerned) until the *customer* has had the opportunity to consider an *illustration*.

**5.5.5** **G** The effect of the requirements at **■ MCOB 5.5.1 R(1)** and **■ MCOB 5.5.4 R** is that a *customer* will be deemed to be committed to an application if, for example, he pays a product related fee (including a valuation fee) or provides electronic or verbal authority to process an application. It is not necessary for a *customer* to provide a *mortgage lender* with a completed application form to submit an application for a *regulated mortgage contract*.

**5.5.6** **G** [deleted]

**5.5.7** **R** The *firm* dealing directly with the *customer* is responsible for ensuring compliance with the content and timing requirements, that is, a *mortgage lender* is not responsible for ensuring that a *customer* has received an *illustration* before accepting an application from a *mortgage intermediary*.

**5.5.8** **R** Where a *firm* has already provided an *illustration* in accordance with **■ MCOB 5.5.1 R** and the terms for the proposed *regulated mortgage contract* are subsequently materially altered, the *firm* must ensure that the *customer* is provided with a revised *illustration*, before acting on the amendment, when the change occurs at the point at which a *customer* submits an application for the *regulated mortgage contract*.

**5.5.9** **G** What constitutes 'materially altered' requires consideration of the facts of each individual case. For example, a change of product such that the underlying terms and conditions of the *regulated mortgage contract* have changed should normally be regarded as material, as would an additional charge, such as a *higher lending charge*, applying to the *regulated mortgage contract* when it did not previously.

**5.5.10** **G** Unless the *customer* requests a revised *illustration*, a *firm* is not required to provide one if the *customer* has already submitted an application, and an amendment is made subsequently. The *mortgage lender* should however ensure that any amendment is reflected in the *offer document*.

**Uncertainty whether a mortgage is regulated**

**5.5.11** **R** (1) If, at the point an *illustration* must be provided in accordance with **■ MCOB 5.5.1 R**, a *firm* is uncertain whether the contract will be a *regulated mortgage contract*, the *firm* must:

- (a) provide an *illustration*; or
- (b) seek to obtain from the *customer* information that will enable the *firm* to ascertain whether the contract will be a *regulated mortgage contract*.

(2) Where (1)(b) applies, an *illustration* must be provided, unless, on the basis of the information the *customer* provides, the *firm* has reasonable evidence that the contract is not a *regulated mortgage contract*.

**5.5.12** **G** If the *firm* has reasonable evidence that the contract is not a *regulated mortgage contract* and has not provided an *illustration* before a *customer* submits an application, and it is subsequently found that the contract is a *regulated mortgage contract*, there is no requirement to provide a separate *illustration* at that stage. However, the requirement to integrate an *illustration* into the *offer document* at **■ MCOB 6.4.1 R** will apply.

**5.5.13** **R** [deleted]

**Providing an illustration without delay in response to a customer request**

**5.5.14** **G** Where the *customer* requests an *illustration* for a particular *regulated mortgage contract* (see ■ MCOB 5.5.1 R (2)(d)), the purpose of ■ MCOB 5.5.15 R, ■ MCOB 5.5.16 R and ■ MCOB 5.5.17 G is to ensure that the *customer* receives an *illustration* without unnecessary delay. These requirements do not restrict the information that the *firm* may obtain from the *customer* after it has provided the *customer* with an *illustration*.

**5.5.15** **R** In meeting a request for an *illustration* in accordance with ■ MCOB 5.5.1 R (2)(d), the *firm* must not delay the provision of the *illustration* by requesting information other than:

- (1) the information necessary to personalise the *illustration* in accordance with ■ MCOB 5.6.6 R, if the *firm* does not already know it;
- (2) where the *firm* acts in accordance with ■ MCOB 5.5.11 R(2), such information as is necessary to ascertain whether or not the contract will be a *regulated mortgage contract*;
- (3) where the *regulated mortgage contract* involves any *linked deposits* and the *firm* chooses to provide an example in the *illustration* in accordance with ■ MCOB 5.6.109 R(2) or ■ MCOB 5.6.110 R(2), or both, such information as is necessary to produce the example;
- (4) where the interest rates, payments or any other terms and conditions to be included in the *illustration* are dependent on the *customer's* credit record, such information as is necessary to produce an *illustration*;
- (5) where the *firm* includes a quotation for any *tied products* or compulsory insurance in the *illustration*, such information as is necessary to produce those quotations;
- (6) where the *customer* agrees to receive a quotation for insurance in the *illustration* (other than that provided for in (5)), such information as is necessary to produce those quotations; and
- (7) any of the following information where it affects the availability of the *regulated mortgage contract* that the *customer* has requested information on or affects the information to be included in the *illustration*:
  - (a) whether the *customer* is a first-time buyer, a subsequent buyer moving home or entering into a *regulated mortgage contract* without moving home;
  - (b) whether the *regulated mortgage contract* is required for a right-to-buy purchase or for a shared ownership purchase;
  - (c) [deleted]
  - (d) the location of the property to be purchased, where known; and
  - (e) whether the terms are dependent on a third party guarantee.

- 5.5.16** **R** Where ■ MCOB 5.5.15 R(4) applies:
- (1) a *firm* must ask the *customer* relevant questions about his credit history or obtain information on his credit record from a credit reference agency;
  - (2) a credit reference agency must not be used unless:
    - (a) it would be quicker than asking the *customer* the relevant questions about his credit history; or
    - (b) the *customer* is not able to provide sufficient information on his credit history.
- 5.5.17** **G** A *firm* may use information that it already holds on the *customer* for the purpose of producing the *illustration* (for example, if it already holds the *customer's* credit record), providing the use of this information does not delay the *customer* receiving the *illustration* and the *customer's* consent is obtained where appropriate.
- 5.5.18** **R** If, on the basis of the information obtained from the *customer* or on the basis of information that the *firm* already holds on the *customer*, the *firm* would do business with the *customer*, but not on the terms requested, the *firm* may provide the *customer* with an *illustration* in respect of a different regulated mortgage contract if it chooses to do so.