

Chapter 8

Equity release: advising and selling standard

8.6A Execution-only sales

Scope and application of this section

- 8.6A.1 **G**
- (1) ■ MCOB 8.6A provides that a *firm* may only enter into an *equity release transaction* with a *customer*, or *arrange* such a transaction for a *customer*, as an *execution-only sale* if the *customer* has rejected *advice*, identified the product he wishes to purchase and positively elected to proceed with an *execution-only sale*.
- (2) The aim of ■ MCOB 8.6A is to ensure that, in all sales of *equity release transactions*, there is one *firm* which *advises* the *customer* on the *equity release transaction* and, where applicable, is responsible for ensuring that the conditions for an *execution-only sale* are satisfied. So, as provided in ■ MCOB 8.1.2A R, ■ MCOB 8.6A only applies to *equity release providers* in relation to entering into *equity release transactions* where there is no *firm* which is *arranging* the transaction and to which ■ MCOB 8.6A applies.

The customer's best interests

- 8.6A.2 **G**
- Firms* are reminded that ■ MCOB 2.5A.1 R (The customer's best interests) applies in all cases, including in relation to *execution-only sales*.

- 8.6A.3 **R**
- A *firm* must not encourage a *customer* to reject *advice* received by him on *equity release transactions*.

The conditions for execution-only sales

- 8.6A.4 **R**
- A *firm* must not enter into or *arrange* an *execution-only sale* for a *equity release transaction* unless:
- (1) the *customer* has rejected the *advice* given by the *firm* and instead requested an *execution-only sale* of an *equity release transaction*;
- (2) the *customer* has identified which particular *equity release transaction* he wishes to purchase, and specified to the *firm* at least the required additional information (where applicable);
- (3) after providing the required information in (2), the *customer* has been informed, clearly and prominently and in a *durable medium*, and that the *customer* will not benefit from the protection of the rules (in ■ MCOB 8.5A) on assessing suitability.

(a) in any case where the *firm* has advised the *customer* that the *equity release transaction* is unsuitable for the *customer*, that that is the case; and

(b) in any other case, that in the provision of its services for the *execution-only sale* the *firm* is not required to assess the suitability of that *equity release transaction*;

and in either case that the *customer* will not benefit from the protection of the rules (in ■ MCOB 8.5A) on assessing suitability. In any case where there is spoken dialogue between the *firm* and the *customer* at any point, the *firm* must also provide this information orally; and

(4) after the *customer* has been provided with the information in (3), in any case where there is spoken or other interactive dialogue between the *firm* and the *customer* at any point, the *customer* has confirmed in writing to the *firm* that he is aware of the consequences of losing the protections of the rules on assessing suitability and is making a positive election to proceed with an *execution-only sale*. The written confirmation must be in the same document as the information in *durable medium* in (3), which must be separate from any other information and contractual documentation.

Exception: rate switches and other variations to lifetime mortgages

8.6A.5

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(1) The condition in ■ MCOB 8.6A.4R (1) does not apply in the case of a variation of a *lifetime mortgage*, provided that:

(a) the variation would not involve the *customer* taking on additional borrowing beyond the amount currently outstanding under the existing *lifetime mortgage*, other than to finance any product fee or arrangement fee for the proposed new or varied contract; and

(b) where the variation will (in whole or part) change from one interest rate to another, the *firm* has presented to the *customer*, using a non-interactive channel, all products offered by it for which the *customer* is eligible, whether or not the *customer* then selects from those products using an interactive channel.

(2) The reference to a variation in (1) (and in all other provisions which cross-refer to this *rule*) must be read as including any new *lifetime mortgage* which would replace an existing *lifetime mortgage* between the *customer* (or, where there are joint borrowers, at least one of them) and the *firm* (either as the original *equity release provider* or as the transferee of the existing contract).

8.6A.6

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(1) The variation in ■ MCOB 8.6A.5R might involve the addition or removal of a borrower for joint mortgages or a change in payment method. This list is not exhaustive.

(2) Examples of rate changes in ■ MCOB 8.6A.5R (2) are: a transfer from a variable rate to a fixed rate; and a transfer from one fixed rate to another fixed rate.

- (3) *Firms* are reminded that, if their presentation in ■ MCOB 8.6A.5R (1)(b) has (either explicitly or implicitly) steered the *customer* towards any one or more of the products offered by them such as to constitute *advice*, the requirements of ■ MCOB 8.5A will apply.

8.6A.7

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The required additional information in ■ MCOB 8.6A.4R (2) is:

- (1) for a *lifetime mortgage* other than one falling within ■ MCOB 8.6A.5 R:
- (a) the name of the *mortgage lender*;
 - (b) the rate of interest;
 - (c) the interest rate type;
 - (d) the price or value of the property on which the *lifetime mortgage* would be secured (estimated where necessary); and
 - (e) the sum the *customer* wishes to borrow under it, either immediately or in the future (including the amount of any lump sum, any regular drawdown or flexible facility or any combination of amounts the *customer* wishes to apply for);
- (2) for a *home reversion plan*:
- (a) the name of the *equity release provider*;
 - (b) any initial lump sum required and any lump sum required in the future;
 - (c) the price or value of the property to which the *home reversion plan* would relate (estimated where necessary); and
 - (d) in the case of a *home reversion plan* which is not a full reversion, the amount or percentage of the value of the property that the *customer* wishes to retain.

8.6A.8

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Where the information in ■ MCOB 8.6A.4R (3) is given by electronic means, the *firm* should ensure that the *customer* cannot progress to the next stage of the sale unless the information has been communicated to the *customer*.

Record keeping

8.6A.9

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- (1) Whenever a *firm* enters into or *arranges* an *execution-only sale* for an *equity release transaction*, it must make and maintain a record of:
- (a) the required information provided by the *customer* which satisfies ■ MCOB 8.6A.4R (2);
 - (b) the information in *durable medium* in ■ MCOB 8.6A.4R (3);
 - (c) the confirmation by the *customer* in ■ MCOB 8.6A.4R (4) (where applicable); and
 - (d) any *advice* from the *firm* which the *customer* rejected, including the reasons why it was rejected, before deciding to enter into an *execution-only sale*.
- (2) The record in (1) must be retained for a minimum of three years from the date on which the *equity release transactions* was entered into or *arranged*.

Forbearance

8.6A.10

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The restrictions in ■ MCOB 8.6A on entering into *execution-only sales* do not apply to any variation which is made solely for the purposes of forbearance where the *customer* has a *payment shortfall*, or in order to avoid a *payment shortfall*.