

Chapter 1

Application and purpose

1.6 Distinguishing regulated mortgage contracts and regulated credit agreements

- 1.6.1** **G** *MCOB applies to regulated mortgage contracts. For certain categories of regulated mortgage contract, MCOB applies from the dates mentioned in ■ MCOB 1.2.21G. A credit agreement secured on land that is not a regulated mortgage contract, for example because the borrower is not an individual or a trustee, may be a regulated credit agreement to which the CCA and CONC apply (see ■ CONC 1.2.7G).*
- 1.6.2** **G** *Principle 2 requires a firm to conduct its business with due skill, care and diligence. The purpose of ■ MCOB 1.6.3 R is to reinforce this. The FCA would expect firms to take appropriate steps to determine whether any mortgage it proposes to enter into is subject to FCA regulation and, if so, whether it is a regulated mortgage contract or a regulated credit agreement.*
- 1.6.3** **R** *Before a firm enters into a mortgage, it must take all reasonable steps to establish whether that mortgage will be a regulated mortgage contract and therefore subject to MCOB.*
- 1.6.4** **R** *If, notwithstanding the steps taken by a firm to comply with ■ MCOB 1.6.3 R, it transpires that a mortgage which the firm has treated as unregulated or as a regulated credit agreement is in fact a regulated mortgage contract, the firm must as soon as practicable after the correct status of the mortgage has been established:*
- (1) *contact the customer and provide him with the following information in a durable medium:*
 - (a) *a statement that the mortgage contract is a regulated mortgage contract ; and*
 - (b) *(i) where the firm has treated the mortgage as unregulated, a statement that the mortgage contract is subject to FCA regulation, stating in particular the position with regard to redress and compensation; or*
 - (ii) where the firm has treated the mortgage as a regulated credit agreement, a statement that;*
 - (A) *(A) neither the CCA nor CONC will apply to the mortgage contract;*

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- (B) (B) any rights or requirements arising under the CCA or CONC set out in previous communications will not apply; and
 - (C) (C) MCOB will apply to the mortgage contract.
- (2) apply to the *regulated mortgage contract* all relevant MCOB requirements, such as those on disclosure (in ■ MCOB 7) or on the treatment of *customers in arrears* (in ■ MCOB 13).
- (1) ■ MCOB 1.6.4 R(2) means, for example, that if a *firm* discovered immediately after completion that a loan was a *regulated mortgage contract*, the *firm* would be required to comply with ■ MCOB 7.4 (Disclosure at the start of the contract).
- (2) Although ■ MCOB 1.6.4 R recognises that *firms* may become aware that a mortgage is a *regulated mortgage contract* at a late stage, the FCA expects this to be an extremely rare occurrence. It could arise, for example, if a *firm* has acted on the understanding, verified as far as was practicable, that in respect of a particular mortgage contract less than 40% of the land would be used in connection with a dwelling. If it was discovered later that more than 40% of the land was used in connection with the dwelling (and provided that all the other legal requirements were met) the mortgage will be a *regulated mortgage contract* to which MCOB applies.
- (3) ■ MCOB 1.6.3 R and ■ MCOB 1.6.4 R do not override the application of MCOB to any *regulated mortgage contract*. MCOB applies notwithstanding a *firm's* genuine belief that a mortgage is unregulated or is a *regulated credit agreement*. In deciding whether to take disciplinary action as a result of a breach of MCOB, the FCA will take into account whether the action by the *firm* was reckless or deliberate (see ■ DEPP 6.2.1G (1)(a)).