

## Chapter 2A

# Mortgage Credit Directive



**2A.1 Remuneration: MCD regulated mortgage contracts**

- 2A.1.1** **R** (1) An *MCD mortgage lender* must not remunerate its *members of staff* or *MCD mortgage credit intermediaries* in a way that impedes the *MCD mortgage lender* from complying with the *rules*.
- (2) An *MCD mortgage credit intermediary* must not remunerate its *members of staff* or *appointed representatives* in a way that impedes the *MCD mortgage credit intermediary* from complying with the *rules*.

[Note: article 7(2) of the *MCD*]

- 2A.1.2** **R** When establishing and applying *remuneration* policies for *members of staff* who are responsible for the assessment of affordability for *consumers*, an *MCD mortgage lender* must comply with the following principles:
- (1) be consistent with, and promote, sound and effective risk management;
  - (2) not encourage risk-taking that exceeds the level of tolerated risk of the *MCD mortgage lender*;
  - (3) be in line with the business strategy, objectives, values and long-term interests of the *MCD mortgage lender*; and
  - (4) incorporate measures to avoid conflicts of interest, in particular by providing that *remuneration* is not contingent on the number or proportion of applications accepted.

[Note: article 7(3) of the *MCD*]

- 2A.1.3** **R** An *MCD mortgage lender* must comply with **■ MCOB 2A.1.2 R** in a way and to the extent that is appropriate to its size, internal organisation and the nature, scope and complexity of its activities:

[Note: article 7(3) of the *MCD*]

- 2A.1.4** **R** An *MCD mortgage adviser*, or any other *firm* that is an *MCD mortgage lender* or an *MCD mortgage arranger* that provides advisory services within the meaning of article 4(21) of the *MCD*, must ensure that the *remuneration* structure of the *members of staff* involved does not:

- (1) prejudice the ability of the *members of staff* or the *firm* to act in the *consumer's* best interest; and
- (2) be contingent on sales targets.

[Note: article 7(4) of the *MCD*]

2A.1.5

**G**

The *remuneration* policies of *MCD mortgage lenders* and *MCD mortgage credit intermediaries*, including those that take account of sales volumes, should not be designed in a way that would incentivise their *members of staff* to conclude a given number or type of *MCD regulated mortgage contracts*.

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## 2A.2 Tying practices

**2A.2.1** **R** Except in the circumstances specified in **■** MCOB 2A.2.2 G, **■** MCOB 2A.2.3 R and **■** MCOB 2A.2.4 R, neither an *MCD mortgage lender* nor an *MCD mortgage credit intermediary* may engage in any *tying practice*.

[**Note:** article 12(1) of the *MCD*]

**2A.2.2** **G** A *firm* will not be engaging in a *tying practice* where the financial service or product offered together with the *MCD credit agreement* cannot be offered separately as it is a fully integrated part of the *credit*, for example, a secured overdraft.

**2A.2.3** **R** An *MCD mortgage lender* may request the *consumer*, family member or close relation of the *consumer* to:

- (1) open or maintain a payment or a savings account, where the only purpose of the account is to accumulate capital to repay the *credit*, to service the *credit*, to pool resources to obtain the *credit*, or to provide additional security for the *MCD mortgage lender* in the event of default;
- (2) purchase or keep an investment product or a private pension product, where such product primarily offers the investor an income in retirement and also serves to provide additional security for the *MCD mortgage lender* in the event of default or to accumulate capital to repay the *credit*, to service the *credit* or to pool resources to obtain the *credit*; or
- (3) conclude a separate *MCD regulated mortgage contract* in conjunction with a *shared equity credit agreement* to obtain the *credit*.

[**Note:** article 12(2) of the *MCD*]

**2A.2.4** **R** An *MCD mortgage lender* may engage in *tying practices* where it can demonstrate to the *FCA* that the tied products or categories of product offered, on terms and conditions similar to each other, which are not made available separately, result in a clear benefit to the *consumer* taking due account of the availability and the prices of the relevant products offered on the market. This *rule* only applies to products which are marketed after 20 March 2014.

[**Note:** article 12(3) of the *MCD*]

2A.2.5

**R**

An *MCD mortgage lender* may require the *consumer* to hold a relevant insurance policy related to the *MCD regulated mortgage contract* but, where it does so, the *MCD mortgage lender* must accept an insurance policy from a supplier different to his preferred supplier where such policy has a level of guarantee equivalent to the one the *MCD mortgage lender* has proposed.

[**Note:** article 12(4) of the *MCD*]



**2A.3 Foreign currency loans**

**2A.3.1** **R** Where an *MCD regulated mortgage contract* relates to a *foreign currency loan*, at the time the *MCD regulated mortgage contract* is entered into the *MCD mortgage lender* must ensure:

- (1) the *consumer* has a right to convert the *MCD regulated mortgage contract* into an alternative currency under specified conditions; or
- (2) there are other arrangements in place to limit the exchange rate risk to which the *consumer* is exposed under the *MCD regulated mortgage contract*.

[Note: article 23(1) of the *MCD*]

**2A.3.2** **G** The “other arrangements” referred to in **■** MCOB 2A.3.1R (2) may include:

- (1) a cap; or
- (2) a risk warning (where a risk warning would be sufficient to limit the exchange rate risk (if any) to which the consumer is exposed).

**2A.3.3** **G** Where:

- (1) an *MCD regulated mortgage contract* is denominated in the currency of the *EEA State* in which the *consumer* is resident (“currency A”); and
- (2) the *consumer* receives income or holds assets in currency A but also receives income or holds assets in another currency (“currency B”);

the *MCD regulated mortgage contract* will not be a *foreign currency loan* unless the credit is to be repaid wholly or in part from the income received or assets held in currency B.

**2A.3.4** **R** The alternative currency referred to in **■** MCOB 2A.3.1R (1) must be either:

- (1) the currency in which the *consumer* primarily receives income or holds assets from which the *credit* is to be repaid, as indicated at the time that the most recent affordability assessment in relation to the *regulated mortgage contract* was made; or

(2) the currency of the *EEA State* in which the *consumer* either was resident at the time that the *MCD regulated mortgage contract* was entered into or is currently resident.

[Note: article 23(2) of the *MCD*]

2A.3.5

**R**

Where a *consumer* has a right to convert the *MCD regulated mortgage contract* into an alternative currency in accordance with ■ MCOB 2A.3.1R (1), the exchange rate at which the conversion is carried out must be the market exchange rate applicable on the day of application for conversion, unless otherwise specified in the *MCD regulated mortgage contract*.

[Note: article 23(3) of the *MCD*]

2A.3.6

**R**

A *firm* must disclose to the *consumer* its arrangements for complying with the obligations in ■ MCOB 2A.3.1 R in the *MCD regulated mortgage contract*.

[Note: article 23(6) of the *MCD*]



## 2A.4 Early repayment

- 2A.4.1** **R** (1) An *MCD mortgage lender* must give a *consumer* who enters into an *MCD regulated mortgage contract* the right to discharge fully or partially his obligations under that *MCD regulated mortgage contract* prior to its expiry.
- (2) If the *consumer* exercises the right in (1), the *MCD mortgage lender* must reduce the *total cost of the credit to the consumer* by an amount equal to the interest and costs for the remaining duration of the *MCD regulated mortgage contract*.

[Note: article 25(1) of the *MCD*]

- 2A.4.2** **R** ■ MCOB 2A.4.1R (1) does not prevent an *MCD mortgage lender* from imposing an *early repayment charge* in accordance with ■ MCOB 12.3.1 R.

- 2A.4.3** **G** ■ MCOB 7A.3 sets out the *MCOB* disclosure rules in relation to early repayment.



**2A.5 Variable rate credits**

**2A.5.1**

**R**

Where the *borrowing rate* under an *MCD regulated mortgage contract* is variable, the *MCD mortgage lender* must:

- (1) ensure that any index or reference rate used to calculate that rate is clear, accessible, objective and verifiable by the parties to the *MCD regulated mortgage contract* and the *FCA*; and
- (2) keep a record of the index or reference rate used to calculate that rate for as long as the *MCD regulated mortgage contract* remains outstanding.

[**Note:** article 24 of the *MCD*]

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**2A.6 Information free of charge**

**2A.6.1**

**R**

When an *MCD mortgage lender* or an *MCD mortgage credit intermediary*, provides information in compliance with the requirements in *MCOB* relating to an *MCD regulated mortgage contract*, it must provide that information free of charge.

[**Note:** article 8 of the *MCD*]