

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

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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

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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

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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

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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

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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*]