

## Chapter 2A

# Mortgage Credit Directive

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2A.1 Remuneration: MCD regulated mortgage contracts

- 2A.1.1

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(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

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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

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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

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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

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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

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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

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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

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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*]

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## 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 pound sterling (“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) pound sterling.

[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**

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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

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(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

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■ 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

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



## 2A.5 Variable rate credits

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### 2A.5.1

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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*]