

## Chapter 4

# Advising and selling standards

**4.11 Sale and rent back: advising and selling standards**

**Initial disclosure requirements**

4.11.1

**R**

- (1) A regulated sale and rent back firm, must make the following disclosures to a customer; both orally and in writing; during the initial contact:
  - (a) the service the firm is offering the customer, making it clear whether the firm will be acting as a SRB agreement provider, a SRB adviser or a SRB arranger and the particular regulated sale and rent back activities for which the firm has a Part 4A permission;
  - (b) if the firm is acting as an intermediary, whether it deals with a single or a range of SRB agreement providers and whether or not those providers are authorised under the Act; and
  - (c) how much the firm will receive in connection with the transaction, whether by way of fees, commissions, charges, retentions or otherwise and whether any such sum will be payable out of the sale proceeds of the property, paid directly by the customer or provider or otherwise and whether or not any of these will be payable if the customer decides not to enter into a regulated sale and rent back agreement.
- (2) If the precise fees, commissions, charges, retentions or other sums in (1)(c) are not known in advance, the firm should estimate the amount likely to apply in respect of the transaction.

**FCA consumer factsheet on sale and rent back**

4.11.2

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- (1) As soon as the customer expresses an interest in becoming a SRB agreement seller, a regulated sale and rent back firm must provide him with the Money Advice Service consumer factsheet on sale and rent back in a durable medium which may be accessed through <http://www.moneyadvice.service.org.uk>.
- (2) The firm on providing the Money Advice Service consumer factsheet in (1) to the customer must give him an oral explanation of it, so as to ensure that the customer fully understands its contents.

**Advised sales**

4.11.3

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A regulated sale and rent back firm must not permit a potential SRB agreement seller to become contractually committed to enter into a regulated sale and rent back agreement unless it has reasonable grounds to

be satisfied that a *firm* with *permission* to advise on regulated sale and rent back agreements has *advised* the particular *customer* to enter into it.

**Suitability**

**4.11.3A** **R** A *firm* must take reasonable steps to ensure that it does not *advise* a particular *customer* to enter into a *regulated sale and rent back agreement* unless the *regulated sale and rent back agreement* is suitable for that *customer*.

**4.11.3B** **G** A *firm* should take reasonable steps to obtain from a *customer* all information likely to be relevant for the purposes of **■ MCOB 4.11.3A R**.

**4.11.3C** **R** For the purposes of **■ MCOB 4.11.3A R**:

- (1) a *regulated sale and rent back agreement* will not be suitable unless, having regard to the facts disclosed by the *customer* and other relevant facts about the *customer* of which the *firm* is or should reasonably be aware, the *firm* concludes on reasonable grounds that:
  - (a) the *customer* can afford the payments he will be liable to make under it; and
  - (b) the proposed *regulated sale and rent back agreement* is appropriate to the needs and circumstances of the *customer*;
- (2) a *firm* must base its determination of whether a *customer* can afford the payments he will be liable to make under a *regulated sale and rent back agreement*, and whether it is appropriate to his needs and circumstances, on the facts disclosed by the *customer* and other relevant facts about the *customer* of which the *firm* is or should reasonably be aware;
- (3) no advice must be given to a *customer* to enter into a *regulated sale and rent back agreement* if there is no *regulated sale and rent back agreement* which is suitable from within the product range offered by the *firm*.

**4.11.4** **E** (1) In assessing whether a *customer* can afford to enter into a particular *regulated sale and rent back agreement*, a *firm* should use the following information:

- (a) the rental payments that will be due under the tenancy agreement which confers the right of the *customer* (or trust beneficiary or related party) to continue residing in the property, stress tested to take account of possible future rental increases during the fixed term of the tenancy agreement by reference to the circumstances in which the agreement permits increases or changes to the initial rent;
- (b) adequate information, obtained from the *customer* to establish his average income and expenditure calculated on a monthly basis, and any other resources that he has available, and verified by the firm using evidence provided by the *customer*;
- (c) the *customer's* net disposable income, which a *firm* should establish using the information referred to in (b);

- (d) the *customer's* entitlement to means-tested benefits and housing benefits; and
  - (e) the effect of any likely future change to the *customer's* income, expenditure or resources during the period of the *regulated sale and rent back agreement*.
- (2) The *firm* should explain to the *customer* that it will base its assessment on whether he can afford to enter into the particular *regulated sale and rent back agreement* on the information he provides to the *firm* about his income, expenditure and resources.
- (3) In assessing affordability under (1) the *firm*:
- (a) must not rely to a material extent on the capital of, or income from, any lump sum the *customer* receives which represents the net sale proceeds of the property; and
  - (b) must disregard any discount or any future sum that may be payable to the *customer* under the terms of the *regulated sale and rent back agreement*.
- (4) Contravention of (1), (2) or (3) may be relied upon as tending to show contravention of ■ MCOB 4.11.3CR (1)(a).

**4.11.4A**

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In assessing whether the *regulated sale and rent back agreement* is appropriate to the needs and circumstances of the *customer* for the purposes of ■ MCOB 4.11.3CR (1)(b), as a minimum requirement a *firm* must consider the following list of factors:

- (1) whether it is appropriate for the *customer* to sell his property for a price less than its value (as determined by the valuation which is required by ■ MCOB 6.9.2 R, including where applicable a valuation obtained by the *SRB agreement seller* as described in ■ MCOB 6.9.2R (4)) (where this is proposed under the *regulated sale and rent back agreement*);
- (2) whether it is appropriate for the *customer* because he is in financial difficulty;
- (3) whether all other options have been explored and eliminated, including the *customer* speaking to his *home finance provider* and other creditors, getting debt advice, releasing the equity by other means and checking whether he is eligible for government or local authority help;
- (4) whether it would be more appropriate for the *customer* to sell his home on the open market;
- (5) whether the benefits to the *customer* in entering into the proposed *regulated sale and rent back agreement* outweigh any adverse effects it may have for him, including on his entitlement to means-tested benefits and housing benefits;
- (6) the feasibility of the *customer* raising funds by alternative methods other than by a sale of his property; and

(7) if the *customer* is not under threat of repossession, why it is appropriate for the *customer* to take out a *regulated sale and rent back agreement* rather than to use an alternative method of finance.

**4.11.4B** **E** The following may be relied on as tending to show contravention of **■ MCOB 2.5A.1 R** (The customer's best interests):

- (1) an attempt by the *firm* to misdescribe the *customer's* reasons for considering a *regulated sale and rent back agreement*; or
- (2) an attempt to encourage a *customer* to enter into a *regulated sale and rent back agreement* involving a sale price for his property which is less than its value (as determined by the valuation which is required by **■ MCOB 6.9.2 R**, including where applicable a valuation obtained by the *SRB agreement seller* as described in **■ MCOB 6.9.2R (4)**) if he is not under threat of repossession.

**4.11.4C** **G** *Firms* are reminded that the list in **■ MCOB 4.11.4A R** is not exhaustive. For certain *customers* there may be additional considerations to explore beyond those described in that rule.

**4.11.5** **E** [deleted]

**4.11.6** **G** In considering the *customer's* entitlement to the means-tested benefits and housing benefits for the affordability and appropriateness assessment, a *firm* may rely on information provided to it by the *customer*, provided it is satisfied on reasonable grounds that the customer has received advice from the appropriate HM Government department or other appropriate source of independent advice as to his position.

**4.11.7** **G**

- (1) A consideration of the *customer's* benefits position will need to focus on whether, by entering into the proposed *regulated sale and rent back agreement*, his entitlement to means-tested benefit will be adversely affected because of his receipt of the net proceeds of sale (if any) of the property. The *customer's* possible loss of entitlement to claim housing benefit should also be assessed. Where a *firm* has insufficient knowledge of means-tested and housing benefits to reach a conclusion on this, it should advise the customer to contact the appropriate HM Government department or other appropriate source of independent advice to establish the position. The *firm* should then wait for the customer to obtain the relevant information before proceeding with its assessment.
- (2) The *firm* should consider whether a *customer* with a *payment shortfall* under his *regulated mortgage contract* or *home purchase plan* has contacted his *mortgage lender* or *home purchase provider* to discuss possible forbearance options that may be available. Other possible alternative methods of raising funds will include the availability of local authority or other government rescue schemes that might apply in the *customer's* circumstances.
- (3) *Firms* are reminded that under **■ MCOB 4.11.2R** they are required to provide the *customer* with the *FCA* consumer factsheet on sale and

rent back and give him an oral explanation of its contents. The *FCA* expects this to be done in the course of a face-to-face meeting. *Firms* will be expected in the course of this discussion with the *customer* to explain alternative options that may be available to him, such as liaising with his *mortgage lender* or *home purchase provider* to negotiate a forbearance strategy or approaching his local authority about the availability of mortgage rescue schemes.

### Record keeping

4.11.8

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- (1) A *firm* must make and retain a record of the *customer* information that has been provided to it, including that relating to:
- (a) the *customer's* income, expenditure and other resources that it has obtained from him for the purpose of assessing affordability, together with the stress testing of the rental payments;
  - (b) the *customer's* needs, objectives and individual circumstances that it has obtained from him for the purpose of assessing appropriateness; and
  - (c) the *customer's* entitlement to means-tested benefits and housing benefits, including any evidence provided by the *customer*, that it has obtained from him for the affordability and appropriateness assessment;
- and which explains why the *firm* concluded that the *regulated sale and rent back agreement* was suitable for the *customer* and why it *advised* him to enter into it..
- (2) The record in (1) must be retained for a minimum of five years from the date on which the assessment of suitability was made, or one year after the end of the fixed term of the tenancy agreement under the *regulated sale and rent back agreement*, if later.

### Reliance on another firm

4.11.9

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A *firm* need not comply with the requirements imposed on a *regulated sale and rent back firm* in this section to the extent that it is satisfied on reasonable grounds that another *firm*, with the appropriate *permission* to do so, has already done so.

4.11.10

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The effect of **■** MCOB 4.11.9R is that a *SRB agreement provider* is expected to *advise* in relation to a particular *regulated sale and rent back agreement*, unless it is reasonable for it to rely on another *firm* with *permission* to *advise* on *regulated sale and rent back agreements*, to have done so in relation to a particular transaction.