

Chapter 6

Disclosure at the offer stage

6.9 Regulated sale and rent back agreements

Process for concluding regulated sale and rent back agreements

6.9.1 **R** A *SRB agreement provider* must not enter into a *regulated sale and rent back agreement* unless it follows the process outlined in this section.

Valuation of the property

- 6.9.2** **R**
- (1) A *SRB agreement provider* intending to enter into a specific *regulated sale and rent back agreement* with a *SRB agreement seller* and before it complies with the other requirements in this section, must ensure that the property is properly valued by a valuer:
 - (a) that meets the competence and independence requirements (see ■ MCOB 2.6A.12 R, ■ MCOB 2.6A.12A R and ■ MCOB 2.6A.13 E); and
 - (b) using the definition of "market value" set out in the Valuation Standard of the Royal Institution of Chartered Surveyors from time to time.
 - (2) Where the *SRB agreement provider* has applied to a *mortgage lender* for financing for a proposed *regulated sale and rent back agreement* and the relevant lender in accordance with its standard lending practices requires its own valuation of the property to be carried out, the valuation will only satisfy the requirements of (1) if the property is properly valued by a valuer that meets the competence and independence requirements (see ■ MCOB 2.6A.12 R and ■ MCOB 2.6A.13 E).
 - (3) The *firm* must ensure that a copy of the valuation report accompanies the written pre-offer document at Stage One (see ■ MCOB 6.9.3 R).
 - (4) This *rule* does not apply if the *SRB agreement seller* has already obtained his own recent valuation of the property from a valuer that meets the competence and independence requirements (see ■ MCOB 2.6A.12 R and ■ MCOB 2.6A.13 E).

Written pre-offer document: Stage One

6.9.3 **R** (1) As soon as a *SRB agreement provider* agrees the key terms of a proposed *regulated sale and rent back agreement* with a *SRB agreement seller* and before he becomes contractually committed to enter into the agreement, the *SRB agreement provider* must provide

the seller with a written pre-offer document summarising its key terms (Stage One).

- (2) The written pre-offer document must be in the form prescribed by ■ MCOB 6 Annex 2 R and must be adapted by the *firm*, as appropriate, to the extent specified.
- (3) The written pre-offer document must be accompanied by the Money Advice Service consumer factsheet on sale and rent back (even if the *firm* has already provided this) which the *firm* must provide to the *customer* in a *durable medium* and which may be accessed through www.moneyadvice.service.org.uk .
- (4) On providing the Money Advice Service consumer factsheet to the *SRB agreement seller*, the *firm* must give him an oral explanation of what it contains, so as to ensure that he understands its contents, unless the *firm* has already done so.
- (5) The *firm* must ensure that the written pre-offer document is accompanied by all associated legal documents in draft form that the seller will need to sign at Stage Two (■ MCOB 6.9.10 R) to give effect to the proposed *regulated sale and rent back agreement*.

Cooling-off: No contact between SRB agreement provider and SRB agreement seller

6.9.4 **R** The *SRB agreement provider* must not instigate any contact or otherwise seek to communicate with the *SRB agreement seller* or a member of his family for a period of 14 days from the time that he has been supplied with the written pre-offer document at Stage One, together with the associated legal documentation in draft form.

6.9.5 **R** If the *SRB agreement seller* or a member of his family makes contact with the *SRB agreement provider* during the 14 day cooling-off period, for example because he wants to query a term of the written pre-offer document, the provider must endeavour to answer the query in as factual a manner as the circumstances permit but avoid any language or conduct which could be interpreted as amounting to an attempt to exert pressure on the *SRB agreement seller* to enter into the proposed agreement.

Exercise of cooling-off rights: costs and expenses

6.9.6 **R** The *SRB agreement provider* must not charge or seek to charge a potential *SRB agreement seller* for any fee, cost, or expense unless and until the seller has entered into the *regulated sale and rent back agreement* following the 14 day cooling-off period.

Responsibility of SRB agreement provider during cooling-off period

6.9.7 **R** The *SRB agreement provider* must not offer to or enter into a *regulated sale and rent back agreement* with the seller until the 14 day cooling off period has elapsed and must not allow the seller to become contractually committed to enter into any such agreement by signing any associated legal documentation to give effect to it within that period.

Requirement to notify the mortgage lender or home purchase provider where the seller is in arrears

6.9.8 **R** As soon as a *SRB agreement provider* has provided the written pre-offer document at Stage One to a *SRB agreement seller* who is in *arrears* under his *regulated mortgage contract* or *home purchase plan* on the property to which the proposed *regulated sale and rent back agreement* relates, it must, in a *durable medium*, immediately notify the *mortgage lender*, *home purchase provider* or the providers of other loans that may be secured on the property:

- (1) explaining that the *firm* is proposing to enter into a *regulated sale and rent back agreement* with the seller and that, as required by the *FCA*, he will be given a cooling-off period of 14 days before deciding whether he wishes to enter into the proposed agreement;
- (2) summarising the key terms of the proposed agreement;
- (3) advising the lender or provider that the proposed agreement is likely to be relevant to any repossession action or other forbearance option the lender or provider may already be, or may be contemplating, taking with respect to the property; and
- (4) giving the *firm's* contact details should the lender or provider wish for any further information.

Data protection

6.9.9 **G** *Firms* will need to consider the implications of *data protection legislation* under which personal data that a *firm*, as data controller, holds about its *customer* cannot be disclosed to a third party without their consent. In practice the *firm* is likely to need the *SRB agreement seller's* consent to disclosing the matters covered by **MCOB 6.9.8 R** to the relevant *mortgage lender* or *home purchase provider*.

Written offer document for signing: Stage Two

6.9.10 **R**

- (1) No sooner than 14 *days* after the *SRB agreement provider* has supplied the *SRB agreement seller* with the written pre-offer at Stage One, the provider must provide him with a written offer document for signing (Stage Two), accompanied by any formal legal documentation that the parties will need to sign to give effect to the proposed *regulated sale and rent back agreement*.
- (2) The written offer document for signing (Stage Two) must be in the form prescribed by **MCOB 6 Annex 3 R** and must be adapted by the *firm*, as appropriate, to the extent specified.

Records of written pre-offer documents and written offer documents for signing

6.9.11 **R** The *SRB agreement provider* must keep a record of the written pre-offer document at Stage One and the written offer document for signing at Stage Two for a period of:

- (1) one year after the end of the fixed term of the tenancy under the *regulated sale and rent back agreement*; or
- (2) five years from the date of the disclosures and warnings, written offer documents and cooling-off period notices;
whichever is the longer.