

## Chapter 6A

# MCD disclosure at the offer stage



## 6A.3 MCD mortgages: binding offer, content of the offer document and reflection period

6A.3.1

**R**

- (1) If a *firm* offers to enter into an *MCD regulated mortgage contract* with a *consumer*, it must provide the *consumer* with a binding offer set out in an *offer document*.
- (2) The *firm* may also provide an *ESIS*.
- (3) The *firm's* offer in the *offer document* must be on the basis of the information in the *ESIS* relevant to that offer.
- (4) When an *MCD mortgage lender* provides the *consumer* with a binding offer, that offer must be accompanied by an *ESIS* where the characteristics of the offer are different from the information contained in the *ESIS* previously provided.

[Note: article 14(3)(b) and (4) of the *MCD*]

6A.3.2

**R**

- (1) If a *firm* offers to vary an *MCD regulated mortgage contract* with a *consumer*, it must provide the *consumer* with an *offer document*.
- (2) The *firm* may also provide an *ESIS*.
- (3) The *firm's* offer in the *offer document* must be on the basis of the information in the *ESIS* relevant to that offer.
- (4) When an *MCD mortgage lender* offers to vary an *MCD regulated mortgage contract* with a *consumer*, the *offer document* must be accompanied by an *ESIS* where:
  - (a) the characteristics of the offer are different from the information contained in any *illustration* or *ESIS* previously provided in relation to the offer.
  - (b) no *illustration* or *ESIS* has been previously provided in relation to the offer.

6A.3.3

**G**

- (1) ■ MCOB 6A.3.1 R does not prevent a binding offer from being subject to lawful conditions, including conditions which make the binding offer subject to one or more of the matters listed below:
  - (a) there being no material change to the facts and circumstances relating to the binding offer which occurs after the date on which the binding offer is made;

- (b) the fact that the consumer has not knowingly provided incomplete or inaccurate information for the purpose of the assessment of affordability, and has not knowingly falsified or withheld the information provided for the purpose of that assessment.
- (2) The material changes referred to in (1)(a) include a material change:
  - (a) affecting the condition, value or title to the property;
  - (b) in the borrower’s circumstances (such as loss of employment or further secured borrowing taken out after the borrower’s application for an *MCD regulated mortgage contract*) which is likely to have a material impact upon the borrower’s ability to afford the loan.
- (3) However, the lender cannot use conditions in binding offers as a means of avoiding the requirement to undertake a proper affordability assessment under ■ **MCOB 11** before the binding offer is made.

**Reflection period**

- 6A.3.4** R (1) Where an *MCD mortgage lender* provides the *consumer* with a binding offer, it must give the *consumer* a reflection period of at least seven *days*.
- (2) The *MCD mortgage lender* must ensure that, during the reflection period:
  - (a) the offer remains binding on the *MCD mortgage lender*;
  - (b) the *consumer* may accept the offer at any time.

[Note: article 14(6) of the *MCD*]

- 6A.3.5** G The purpose of the reflection period is to provide the *consumer* with sufficient time to compare offers, assess their implications and make an informed decision.

- 6A.3.6** R A *firm* must provide the *consumer* with a copy of the draft agreement for the *MCD regulated mortgage contract* at the beginning of the reflection period.

[Note: article 14(11) of the *MCD*]

**Self-build mortgages and other tranching forms of lending**

- 6A.3.7** G Where it is known that a loan will be released in instalments, for example in the case of a self-build mortgage, the loan can involve a binding offer, *ESIS* and the reflection period either for:
  - (1) the full amount; or
  - (2) an initial amount, which would be replaced by a binding offer, an *ESIS* and reflection period for a larger amount and so on.

**Records**

- 6A.3.8** **R** (1) A *firm* must make an adequate record of each *offer document* which it issues to a *consumer* under **MCOB 6A**.
- (2) The record required by (1) must be retained for one year from the date that the *offer document* is issued to the *consumer*.
- (3) If, in accordance with **MCOB 6A.4** (Information to be provided in the offer document or separately), information is included in a separate document that is sent with the *offer document*, that information must also be retained as part of the record required by (1).

**Information contained in the offer**

- 6A.3.9** **R** A *firm* must ensure that the *offer document* contains a prominent statement explaining:
- (1) the period for which the offer is valid;
- (2) where the *MCD regulated mortgage contract* contains features, such as additional unsecured borrowing facilities, which could result in the *consumer* borrowing more money than, where such features are used, the amount of the *consumer's* debt will increase;
- (3) when any interest rate change on the *MCD regulated mortgage contract* takes effect. This statement must be used, for example, to explain cases where an annual review system is used;
- (4) the consequences that might arise from the *consumer* not entering into the *MCD regulated mortgage contract*, including any fees that the *consumer* has paid which will not be reimbursed;
- (5) that once the *MCD regulated mortgage contract* is concluded, there will be no right of withdrawal; and
- (6) that, although no right of withdrawal exists, the *consumer* will have a right to repay the *MCD regulated mortgage contract* in accordance with the terms of the *MCD regulated mortgage contract*.

**6A.3.10** **G** When setting the period for which the offer is valid (referred to in **MCOB 6A.3.9R** (1), a *firm* should bear in mind the requirement under **MCOB 6A.3.4 R** for a reflection period.

**6A.3.11** **R** The *offer document* must state the *repayment strategy* the *consumer* intends to use.

**6A.3.12** **G** The *offer document* may contain information about any retentions or re-inspections that will be required by the *firm*.

**6A.3.14** **R** A *firm* must ensure that the *offer document* includes information on how to complain to the *firm* about the services provided by the *firm* in relation to the *MCD regulated mortgage contract* and whether or not complaints may subsequently be referred to the *Financial Ombudsman Service*.

- 6A.3.15** **G** ■ DISP 1 requires a *firm* to deal promptly and fairly with *complaints*, including referring to another *firm's complaints* about that other *firm's services*.
- 6A.3.16** **G** In addition to the information required by ■ MCOB 6A.3.9 R, a *firm* may include information about how to complain to any other *firm* about the services that *firm* provided to the *consumer* in relation to the *MCD regulated mortgage contract*. For example, where the *consumer* received advice from another *firm*, an *MCD mortgage lender* may include contact details for the *firm* that provided the advice.
- 6A.3.17** **R** If the *firm* knows, at the point that the offer is made to the *consumer*, that its interest in the *MCD regulated mortgage contract* will be assigned (by sale or transfer) and the *firm* will no longer be responsible for setting interest rates and charges, the *offer document* must:
- (1) state this; and
  - (2) state, where known, who will be responsible for setting interest rates and charges after the sale or transfer.
- 6A.3.18** **R** Where ■ MCOB 6A.3.17 R applies, if the name of the party who will be responsible for setting interest rates and charges after the sale or transfer is not known at the point the offer is made, the *firm* must notify the *consumer* of this as soon as it becomes known.
- 6A.3.19** **G** ■ MCOB 6A.3.17 R and ■ MCOB 6A.3.18 R could apply where the ownership of an *MCD regulated mortgage contract* is transferred to a third party through *securitisation*.