Chapter 8

Equity release: advising and selling standard
8.1 Application

Who?

8.1.1 R This chapter applies to a firm in a category listed in column (1) of the table in MCOB 8.1.2 R in accordance with column (2) of that table.

8.1.2 R This table belongs to MCOB 8.1.1 R

<table>
<thead>
<tr>
<th>(1) Category of firm</th>
<th>(2) Applicable section</th>
</tr>
</thead>
<tbody>
<tr>
<td>equity release provider</td>
<td>whole chapter except MCOB 8.5A and MCOB 8.7, MCOB 8.6A in accordance with MCOB 8.1.2A R</td>
</tr>
<tr>
<td>equity release adviser</td>
<td>whole chapter MCOB 8.7 does not apply in relation to a lifetime mortgage</td>
</tr>
<tr>
<td>equity release arranger</td>
<td>whole chapter except MCOB 8.5A. MCOB 8.7 does not apply in relation to a lifetime mortgage</td>
</tr>
</tbody>
</table>

8.1.2A R MCOB 8.6A only applies to an equity release provider in relation to entering into an equity release transaction where there is no firm which is arranging (bringing about) the equity release transaction to which MCOB 8.6A applies.

8.1.2B G MCOB 8.1.2A R means that the situations where MCOB 8.6A applies to an equity release intermediary includes where an equity release intermediary has been involved in arranging (bringing about) an equity release transaction but is no longer involved in the transaction.

What?

8.1.3 R (1) This chapter applies to a firm which in the course of carrying on an equity release activity enters into, advises on or arranges an equity release transaction or a variation of the terms of an equity release transaction.

(2) In respect of arranging or advising on a home reversion plan for a customer who is acting in his capacity as an unauthorised reversion provider, only MCOB 8.1, MCOB 8.2 and MCOB 8.7 apply.

8.1.4 R (1) Initial disclosure requirements apply only in relation to varying the terms of an equity release transaction entered into by the customer in any of the following ways:
(a) adding or removing a party; 
(b) taking out a further advance; or 
(c) switching all or part of the lifetime mortgage from one interest rate to another.

(2) Otherwise, this chapter applies in relation to any form of variation of an equity release transaction.

8.1.5 [deleted]

8.1.6 Firms are reminded that MCD lifetime mortgages are also subject to the advising and selling standards in MCOB 4.4A and MCOB 4A that apply to MCD regulated mortgage contracts.
8.2 Purpose

8.2.1 [deleted]

8.2.2 (1) This chapter amplifies Principle 6 (Customers' interests), Principle 7 (Communications with clients) and Principle 9 (Customers: relationships of trust).

(2) The purpose of this chapter is to ensure that:

(a) customers are adequately informed about the nature of the service they may receive from a firm in relation to equity release transactions. In particular firms need to make clear to customers the range of equity release transactions available from them and the basis of the firm's remuneration;

(b) where advice is given, it is suitable for the customer;

(c) customers for equity release transactions receive advice in all cases;

(d) subject to certain limited exceptions (which are set out in MCOB 8.6A), execution-only sales are only provided where the customer has rejected advice which has been given, has been warned about the implications of proceeding and has specifically instructed the firm that he wishes to do so.

(3) This chapter also implemented certain requirements of the Distance Marketing Directive in relation to distance mortgage mediation contracts.
8.3 Application of rules in MCOB 4

8.3.1 (a) Subject to (c), MCOB 4.1 to MCOB 4.6A (with the modifications stated in MCOB 8.3.2 R to MCOB 8.3.4 R) apply to a firm where the home finance transaction is a lifetime mortgage.

(b) MCOB 4.1 to MCOB 4.4A (with the modifications stated in MCOB 8.3.2 R to MCOB 8.3.4 R) apply to a firm where the home finance transaction is a home reversion plan, except for those provisions that by their nature are only relevant to regulated mortgage contracts.

(c) MCOB 4.6A applies to a lifetime mortgage only if it is not an interest roll-up mortgage.

(2) The table in MCOB 8.3.3 R shows how the relevant rules and guidance in MCOB 4 must be modified by replacing the cross-references in that chapter with the relevant cross-references to rules and guidance in MCOB 8.

(3) The table in MCOB 8.3.4 R replaces certain rules and guidance in MCOB 4 with rules and guidance from MCOB 8.

(4) The terms that by their nature are relevant only to regulated mortgage contracts must be replaced with the appropriate equivalent terms and expressions for home reversion plans.

8.3.1A The rules and guidance that are not relevant to home reversion plans are those related, for example, to interest rates, APR, higher lending charge, mortgage credit cards, multi-part mortgages and foreign currency mortgages.

8.3.1B Firms should substitute equivalent home reversion terminology for lifetime mortgage terminology, where appropriate. Examples of terms and expressions that should be replaced in relation to home reversion plans are 'loan' or 'amount borrowed', which should be replaced with 'amount released' or 'amount to be released', as appropriate, and 'mortgage lender' and 'mortgage intermediary' which should be replaced with 'reversion provider' and 'reversion intermediary'.

8.3.2 [deleted]

8.3.2A [deleted]
For the purposes of MCOB 4.4A.2R (1) there is one relevant market for equity release transactions. Accordingly, a firm offering a customer only lifetime mortgages or only home reversion plans must include in its disclosure under MCOB 4.4A.1R (1) that it is limited in that regard in the range of products that it can offer to the customer.

In the light of MCOB 8.3.2B, a firm may wish to consider using a sentence appropriate to the circumstances, along the following lines:

• “We offer a comprehensive range of equity release products from across the market.”
• “We sell home reversion plans only and not lifetime mortgages, though we will consider all home reversion plans available in the market.”

Table of modified cross-references to other rules: This table belongs to MCOB 8.3.1 R.

<table>
<thead>
<tr>
<th>Subject</th>
<th>Rule or guidance</th>
<th>Reference in rule or guidance</th>
<th>To be read as</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional disclosure for distance mortgage mediation contracts</td>
<td>MCOB 4.5</td>
<td>MCOB 4</td>
<td>MCOB 4 as modified by MCOB 8</td>
</tr>
</tbody>
</table>

Table of rules in MCOB 4 replaced by rules in MCOB 8: This table belongs to MCOB 8.3.1 R.

<table>
<thead>
<tr>
<th>Subject</th>
<th>Rule(s)</th>
<th>Rule(s) replaced by</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advised sales</td>
<td>MCOB 4.7A</td>
<td>MCOB 8.5A</td>
</tr>
<tr>
<td>Execution-only sales</td>
<td>MCOB 4.8A</td>
<td>MCOB 8.6A</td>
</tr>
</tbody>
</table>
MCOB 8: Equity release: advising and selling standard

8.4 [deleted]

8.4.1 [deleted]
8.5A Advised sales

8.5A.1 G (1) MCOB 8.5A sets out standards to be observed by firms when advising a particular customer on equity release transactions.

(2) The rules at MCOB 8.6A require firms selling equity release transactions to provide advice to the customer, subject to the customer's right to reject advice which has been given and to proceed on an execution-only basis.

Suitability

8.5A.2 R If a firm gives advice to a particular customer to enter into an equity release transaction, or to vary an existing equity release transaction, it must take reasonable steps to ensure that the equity release transaction is, or after the variation will be, suitable for that customer.

8.5A.3 R In MCOB 8.5A, a reference to advice to enter into an equity release transaction is to be read as including advice to vary an existing equity release transaction.

8.5A.4 G A firm should take reasonable steps to obtain from a customer all information likely to be relevant for the purposes of MCOB 8.5A.

8.5A.5 R For the purposes of MCOB 8.5A.2 R:

(1) an equity release transaction will not be suitable for a customer unless the equity release transaction is appropriate to the needs and circumstances of the customer;

(2) a firm must base its determination of whether an equity release transaction is appropriate to a customer's 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 an equity release transaction if there is no equity release transaction which is suitable from the product range offered by the firm;

(4) if a mortgage lender is dealing with an existing customer with a payment shortfall and has concluded that there is no equity release transaction which satisfies the requirements of MCOB 8.5A.2 R, the firm must nonetheless have regard to MCOB 13.3.
When a firm assesses whether the equity release transaction is appropriate to the needs and circumstances of the customer for the purposes of MCOB 8.5A.5 R, the factors it must consider include the following:

1. Whether the benefits to the customer outweigh any adverse effect on:
   a. The customer's entitlement (if any) to means-tested benefits; and
   b. The customer's tax position (for example the loss of an Age Allowance);

2. Alternative methods of raising the required funds such as, in particular:
   a. (where relevant) a local authority (or other) grant; or
   b. Taking a further advance under an existing regulated mortgage contract (including a lifetime mortgage), or a new regulated mortgage contract (including a lifetime mortgage) to replace an existing one, or an additional release under an existing home reversion plan;

3. Whether the customer's requirements appear to be within the equity release provider's known eligibility criteria for the equity release transaction;

4. The customer's preferences for his estate (for example, whether the customer wishes to be certain of leaving a bequest to his family or others);

5. The customer's health and life expectancy;

6. The customer's future plans and needs (for example, whether the customer is likely to need to raise further funds or is likely to move house);

7. Whether the customer has a preference or need for stability in the amount of payments (where payments are required) especially having regard to the impact on the customer of significant interest rate changes in the future;

8. Whether the customer has a preference or need for any other features of an equity release transaction; and

9. For lifetime mortgages only, whether it is more appropriate for the customer to pay any fees or charges in relation to the lifetime mortgage up front, rather than adding them to the sum advanced (see also MCOB 4.6A).

Examples of eligibility criteria in MCOB 8.5A.6R (3) are: the amount that the customer wishes to borrow or to release; the loan-to-value ratio; the age of the customer; the value of the property which would be the subject of the equity release transaction.
The customer’s needs and circumstances: means-tested benefits, customer’s tax position and alternative methods of finance

8.5A.8  In considering the factor at MCOB 8.5A.6R (1), where a firm has insufficient knowledge of means-tested benefits and tax allowances to reach a conclusion, the firm must refer a customer to an appropriate source or sources such as the Pension Service, HM Revenue and Customs or Citizens Advice Bureau (or other similar agency) to establish the required information.

8.5A.9  (1) In considering the factor at MCOB 8.5A.6R (2)(a), a firm should:

(a) establish, on the basis of information given by the customer about his needs and objectives, whether these appear to be within the general scope of a local authority (or other) grant (for example where the customer requires funds for essential repairs to his property); and

(b) refer a customer to an appropriate source such as his local authority or Citizens Advice Bureau (or other similar agency) to identify whether such a grant is available to him.

(2) Compliance with (1) may be relied upon as tending to show compliance with MCOB 8.5A.6R (2)(a).

8.5A.10  If for any reason a customer:

(1) declines to seek further information on means-tested benefits, tax allowances or the scope for local authority (or other) grants; or

(2) rejects the conclusion of a firm that alternative methods of raising the required funds are more suitable;

a firm can advise the customer (in accordance with the remaining requirements of this chapter) to enter into an equity release transaction where there is an equity release transaction (or more than one equity release transaction) that is appropriate to the needs and circumstances of the customer, but must confirm to the customer, in a durable medium, the basis on which the advice has been given.

Debt consolidation

8.5A.11  In relation to MCOB 8.5A.5R (1), when a firm advises a customer in relation to entering into an equity release transaction where the main purpose for doing so is the consolidation of existing debts by the customer, it must also take account of the following in assessing whether the equity release transaction is suitable for the customer:

(1) the costs associated with increasing the period over which a debt is to be repaid;

(2) whether it is appropriate for the customer to secure a previously unsecured loan; and

(3) where the customer is known to have payment difficulties, whether it would be more appropriate for the customer to negotiate an
arrangement with his creditors than to enter into an equity release transaction.

8.5A.12 An attempt by the firm to misdescribe the customer's purpose or to encourage the customer to tailor the amount he wishes to borrow so that MCOB 8.5A.11 R does not apply may be relied on as tending to show contravention of MCOB 2.5A.1 R (The customer's best interests).

Further advances

8.5A.13 Where the customer is looking to increase the borrowing secured on the property which is the subject of an existing regulated mortgage contract, a firm must inform the customer (either orally or in writing) that it may be possible, and more appropriate, for the customer to take a further advance with the existing lender rather than entering into an equity release transaction with another provider.

8.5A.14 MCOB 8.5A.13 R does not mean that firms are under any obligation to explore whether a further advance with the existing lender is, in fact, more appropriate for the customer.

Other considerations when advising

8.5A.15 When advising a customer on the suitability of an equity release transaction, a firm must explain to the customer that the assessment of whether the equity release transaction is appropriate to his needs and circumstances is based on the customer's current circumstances, which may change in the future.

8.5A.16 Different considerations apply when dealing with a customer with a payment shortfall. For example, the circumstances of the customer may mean that, viewed as a new transaction, a customer should not be advised to enter into an equity release transaction. In such cases, a firm may still be able to advise the customer to enter into an equity release transaction where it is more suitable than the customer's existing home finance transaction.

8.5A.17 MCOB 8.5A.5R (3) means that where the advice provided is based on a selection of equity release transactions from a single or limited number of providers, the assessment of suitability should not be limited to the types of equity release transactions which the firm offers. A firm cannot recommend the 'least worst' equity release transaction where the firm does not have access to products appropriate to the customer's needs and circumstances. This means, for example, that if a firm only has access to lump sum equity release transactions it should not recommend or arrange one of these if approached by a customer requiring regular payments.

8.5A.18 MCOB 8.5A.5R (1) does not require a firm to provide advice on investments. Whether such advice should be given will depend upon the individual needs and circumstances of the customer. MCOB 8 does not restrict the ability of an adviser to refer the customer to another source of investment advice (for example, where the adviser is not qualified to provide advice on investments).
Record keeping

(1) A firm must make and retain a record:

(a) of the customer information, including that relating to the customer's needs and circumstances and the customer's apparent satisfaction of the equity release provider's known eligibility criteria, that it has obtained for the purposes of MCOB 8.5A;

(b) that explains why the firm has concluded that any advice given to a customer complies with MCOB 8.5A.2 R and satisfies the suitability requirement in MCOB 8.5A.5R (1);

(c) of any advice which the customer has rejected, including the reasons why they were rejected and details of the equity release transaction which the customer has proceeded with as an execution-only sale; and

(d) where applicable, of the customer's positive choice in MCOB 4.6A.2 R (Rolling up of fees or charges into loan).

(2) The records in (1) must be retained for a minimum of three years from the date on which the advice was given or, in the case of (1)(d), the making of the choice.
8.6A Execution-only sales

Scope and application of this section

8.6A.1 (1) MCOB 8.6A provides that a firm may only enter into an equity release transaction with a customer, or arrange such a transaction for a customer, as an execution-only sale if the customer has rejected advice, identified the product he wishes to purchase and positively elected to proceed with an execution-only sale.

(2) The aim of MCOB 8.6A is to ensure that, in all sales of equity release transactions, there is one firm which advises the customer on the equity release transaction and, where applicable, is responsible for ensuring that the conditions for an execution-only sale are satisfied. So, as provided in MCOB 8.1.2A R, MCOB 8.6A only applies to equity release providers in relation to entering into equity release transactions where there is no firm which is arranging the transaction and to which MCOB 8.6A applies.

The customer’s best interests

8.6A.2 Firms are reminded that MCOB 2.5A.1 R (The customer’s best interests) applies in all cases, including in relation to execution-only sales.

8.6A.3 A firm must not encourage a customer to reject advice received by him on equity release transactions.

The conditions for execution-only sales

8.6A.4 A firm must not enter into or arrange an execution-only sale for a equity release transaction unless:

(1) the customer has rejected the advice given by the firm and instead requested an execution-only sale of an equity release transaction;

(2) the customer has identified which particular equity release transaction he wishes to purchase, and specified to the firm at least the required additional information (where applicable);

(3) after providing the required information in (2), the customer has been informed, clearly and prominently and in a durable medium, and that the customer will not benefit from the protection of the rules (in MCOB 8.5A) on assessing suitability.
(a) in any case where the firm has advised the customer that the equity release transaction is unsuitable for the customer, that that is the case; and

(b) in any other case, that in the provision of its services for the execution-only sale the firm is not required to assess the suitability of that equity release transaction;

and in either case that the customer will not benefit from the protection of the rules (in MCOB 8.5A) on assessing suitability. In any case where there is spoken dialogue between the firm and the customer at any point, the firm must also provide this information orally; and

(4) after the customer has been provided with the information in (3), in any case where there is spoken or other interactive dialogue between the firm and the customer at any point, the customer has confirmed in writing to the firm that he is aware of the consequences of losing the protections of the rules on assessing suitability and is making a positive election to proceed with an execution-only sale. The written confirmation must be in the same document as the information in durable medium in (3), which must be separate from any other information and contractual documentation.

Exception: rate switches and other variations to lifetime mortgages

(1) The condition in MCOB 8.6A.4R (1) does not apply in the case of a variation of a lifetime mortgage, provided that:

(a) the variation would not involve the customer taking on additional borrowing beyond the amount currently outstanding under the existing lifetime mortgage, other than to finance any product fee or arrangement fee for the proposed new or varied contract; and

(b) where the variation will (in whole or part) change from one interest rate to another, the firm has presented to the customer, using a non-interactive channel, all products offered by it for which the customer is eligible, whether or not the customer then selects from those products using an interactive channel.

(2) The reference to a variation in (1) (and in all other provisions which cross-refer to this rule) must be read as including any new lifetime mortgage which would replace an existing lifetime mortgage between the customer (or, where there are joint borrowers, at least one of them) and the firm (either as the original equity release provider or as the transferee of the existing contract).

(1) The variation in MCOB 8.6A.5 R might involve the addition or removal of a borrower for joint mortgages or a change in payment method. This list is not exhaustive.

(2) Examples of rate changes in MCOB 8.6A.5R (2) are: a transfer from a variable rate to a fixed rate; and a transfer from one fixed rate to another fixed rate.
(3) Firms are reminded that, if their presentation in MCOB 8.6A.5R (1)(b) has (either explicitly or implicitly) steered the customer towards any one or more if the products offered by them such as to constitute advice, the requirements of MCOB 8.5A will apply.

The required additional information in MCOB 8.6A.4R (2) is:

(1) for a lifetime mortgage other than one falling within MCOB 8.6A.5R:
   (a) the name of the mortgage lender;
   (b) the rate of interest;
   (c) the interest rate type;
   (d) the price or value of the property on which the lifetime mortgage would be secured (estimated where necessary); and
   (e) the sum the customer wishes to borrow under it, either immediately or in the future (including the amount of any lump sum, any regular drawdown or flexible facility or any combination of amounts the customer wishes to apply for);

(2) for a home reversion plan:
   (a) the name of the equity release provider;
   (b) any initial lump sum required and any lump sum required in the future;
   (c) the price or value of the property to which the home reversion plan would relate (estimated where necessary); and
   (d) in the case of a home reversion plan which is not a full reversion, the amount or percentage of the value of the property that the customer wishes to retain.

Where the information in MCOB 8.6A.4R (3) is given by electronic means, the firm should ensure that the customer cannot progress to the next stage of the sale unless the information has been communicated to the customer.

Record keeping

(1) Whenever a firm enters into or arranges an execution-only sale for an equity release transaction, it must make and maintain a record of:
   (a) the required information provided by the customer which satisfies MCOB 8.6A.4R (2);
   (b) the information in durable medium in MCOB 8.6A.4R (3);
   (c) the confirmation by the customer in MCOB 8.6A.4R (4) (where applicable); and
   (d) any advice from the firm which the customer rejected, including the reasons why it was rejected, before deciding to enter into an execution-only sale.

(2) The record in (1) must be retained for a minimum of three years from the date on which the equity release transactions was entered into or arranged.
The restrictions in MCOB 8.6A on entering into execution-only sales do not apply to any variation which is made solely for the purposes of forbearance where the customer has a payment shortfall, or in order to avoid a payment shortfall.
8.7 Initial disclosure information: unauthorised reversion provider

8.7.1 A firm must ensure that, on first making contact with a customer who is an individual and an unauthorised reversion provider, when it anticipates giving personalised information or advice on a home reversion plan, it must provide the customer with the following warnings in a durable medium:

(1) that a home reversion plan is a long-term investment; and

(2) that a home reversion plan is a complex legal arrangement, and that expert independent legal advice should be obtained before entering into any agreement.
Initial disclosure document [deleted]
Combined initial disclosure document [deleted]

[deleted]