

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**

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

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 provider* include 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 **G** [deleted]

8.1.6 **G** *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 **G** [deleted]

- 8.2.2 **G**
- (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

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- (1) (a) Subject to (c), ■ MCOB 4.1 to ■ MCOB 4.6A (with the modifications stated in ■ MCOB 8.3.2B 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 8.3.2B 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

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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

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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

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[deleted]

8.3.2A

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[deleted]

8.3.2B **R** 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*.

8.3.2C **G** In the light of **■ MCOB 8.3.2B R**, 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.”

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

Subject	Rule or guidance	Reference in rule or guidance	To be read as a reference to:
Additional disclosure for <i>distance mortgage mediation contracts</i>	<i>MCOB 4.5</i>	<i>MCOB 4</i>	<i>MCOB 4</i> as modified by <i>MCOB 8</i>

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

Subject	Rule(s)	Rule(s) replaced by
Advised sales	MCOB 4.7A	MCOB 8.5A
Execution-only sales	MCOB 4.8A	MCOB 8.6A



8.4 [deleted]

8.4.1

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[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.

8.5A.6

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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).

8.5A.7

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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 **R** 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 **E**

(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 **R** 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 **R** 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** **E** 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** **R** 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** **G** ■ 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** **R** 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** **G** 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** **G** ■ 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** **G** ■ 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

8.5A.19

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- (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** **G** (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** **G** *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** **R** 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** **R** 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

8.6A.5

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(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).

8.6A.6

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(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 of the products offered by them such as to constitute *advice*, the requirements of ■ MCOB 8.5A will apply.

8.6A.7 **R** The required additional information in ■ MCOB 8.6A.4R (2) is:

- (1) for a *lifetime mortgage* other than one falling within ■ MCOB 8.6A.5 R:
 - (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.

8.6A.8 **G** 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.....

- 8.6A.9** **R**
- (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*.

Forbearance

8.6A.10

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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

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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]

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