

## Chapter 8

# Equity release: advising and selling standard



8.5A      Advised sales

8.5A.1	G	<p>(1) ■ MCOB 8.5A sets out standards to be observed by <i>firms</i> when advising a particular <i>customer</i> on <i>equity release transactions</i>.</p> <p>(2) The <i>rules</i> at ■ MCOB 8.6A require <i>firms</i> selling <i>equity release transactions</i> to provide <i>advice</i> to the <i>customer</i>, subject to the <i>customer's</i> right to reject <i>advice</i> which has been given and to proceed on an execution-only basis.</p>
8.5A.2	R	<p><b>Suitability</b></p> <p>If a <i>firm</i> gives <i>advice</i> to a particular <i>customer</i> to enter into an <i>equity release transaction</i>, or to vary an existing <i>equity release transaction</i>, it must take reasonable steps to ensure that the <i>equity release transaction</i> is, or after the variation will be, suitable for that <i>customer</i>.</p>
8.5A.3	R	<p>In ■ MCOB 8.5A, a reference to <i>advice</i> to enter into an <i>equity release transaction</i> is to be read as including <i>advice</i> to vary an existing <i>equity release transaction</i>.</p>
8.5A.4	G	<p>A <i>firm</i> should take reasonable steps to obtain from a <i>customer</i> all information likely to be relevant for the purposes of ■ MCOB 8.5A.</p>
8.5A.5	R	<p>For the purposes of ■ MCOB 8.5A.2 R:</p> <p>(1) an <i>equity release transaction</i> will not be suitable for a <i>customer</i> unless the <i>equity release transaction</i> is appropriate to the needs and circumstances of the <i>customer</i>;</p> <p>(2) a <i>firm</i> must base its determination of whether an <i>equity release transaction</i> is appropriate to a <i>customer's</i> needs and circumstances on the facts disclosed by the <i>customer</i> and other relevant facts about the <i>customer</i> of which the <i>firm</i> is or should reasonably be aware;</p> <p>(3) no <i>advice</i> must be given to a <i>customer</i> to enter into an <i>equity release transaction</i> if there is no <i>equity release transaction</i> which is suitable from the product range offered by the <i>firm</i>;</p> <p>(4) if a <i>mortgage lender</i> is dealing with an existing <i>customer</i> with a <i>payment shortfall</i> and has concluded that there is no <i>equity release transaction</i> which satisfies the requirements of ■ MCOB 8.5A.2 R, the <i>firm</i> must nonetheless have regard to ■ MCOB 13.3.</p>

**8.5A.6**

**R**

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**

**G**

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 <i>firm</i> has insufficient knowledge of means-tested benefits and tax allowances to reach a conclusion, the <i>firm</i> must refer a <i>customer</i> 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	<div><div>(1) In considering the factor at ■ MCOB 8.5A.6R (2)(a), a <i>firm</i> should:</div><div><div>(a) establish, on the basis of information given by the <i>customer</i> 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 <i>customer</i> requires funds for essential repairs to his property); and</div><div>(b) refer a <i>customer</i> 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.</div></div><div>(2) Compliance with (1) may be relied upon as tending to show compliance with ■ MCOB 8.5A.6R (2)(a).</div></div>
8.5A.10	R	<div>If for any reason a <i>customer</i>:</div> <div><div>(1) declines to seek further information on means-tested benefits, tax allowances or the scope for local authority (or other) grants; or</div><div>(2) rejects the conclusion of a <i>firm</i> that alternative methods of raising the required funds are more suitable;</div></div> <div>a <i>firm</i> can advise the <i>customer</i> (in accordance with the remaining requirements of this chapter) to enter into an <i>equity release transaction</i> where there is an <i>equity release transaction</i> (or more than one <i>equity release transaction</i>) that is appropriate to the needs and circumstances of the <i>customer</i>, but must confirm to the <i>customer</i>, in a <i>durable medium</i>, the basis on which the <i>advice</i> has been given.</div>
8.5A.11	R	<div>Debt consolidation</div> <div>In relation to ■ MCOB 8.5A.5R (1), when a <i>firm</i> advises a <i>customer</i> in relation to entering into an <i>equity release transaction</i> where the main purpose for doing so is the consolidation of existing debts by the <i>customer</i>, it must also take account of the following in assessing whether the <i>equity release transaction</i> is suitable for the <i>customer</i>:</div> <div><div>(1) the costs associated with increasing the period over which a debt is to be repaid;</div><div>(2) whether it is appropriate for the <i>customer</i> to secure a previously unsecured loan; and</div><div>(3) where the <i>customer</i> is known to have payment difficulties, whether it would be more appropriate for the <i>customer</i> to negotiate an</div></div>

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

R

- (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.