MORTGAGE MARKET REVIEW (CONDUCT OF BUSINESS) INSTRUMENT 2012

Powers exercised

A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):

(1) section 138 (General rule-making power);
(2) section 149 (Evidential provisions);
(3) section 156 (General supplementary powers); and
(4) section 157(1) (Guidance).

B. The rule-making powers listed above are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.

Commencement

C. (1) Part 2 of Annex D to this instrument comes into force on 26 October 2012.

(2) The remainder of this instrument comes into force on 26 April 2014.

Amendments to the Handbook

D. The modules of the FSA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below.

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Amendments to material outside the Handbook

E. The Perimeter Guidance manual (PERG) is amended in accordance with Annex G to this instrument. The general guidance in PERG does not form part of the Handbook.

Citation

F. This instrument may be cited as the Mortgage Market Review (Conduct of Business) Instrument 2012.

By order of the Board
27 September 2012
Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The new text is not underlined.

**bridging loan**

a *regulated mortgage contract* which has a term of twelve *months* or less.

**credit-impaired customer**

a customer who:

(a) within the last two years has owed overdue payments, in an amount equivalent to three *months*’ payments, on a mortgage or other loan (whether secured or unsecured), except where the amount overdue reached that level because of late payment caused by errors by a bank or other third party; or

(b) has been the subject of one or more county court judgments, with a total value greater than £500, within the last three years; or

(c) has been subject to an individual voluntary arrangement or bankruptcy order which was in force at any time within the last three years.

**direct deal**

a *home finance transaction* that can only be obtained direct from a *home finance provider*, and where that *home finance provider* is not the selling *firm*.

**execution-only sale**

(a) a *home finance transaction* entered into by a *firm* with, or arranged by a *firm* for, a *customer*; or

(b) a variation of an existing *home finance transaction* entered into by a *firm* with, or arranged by a *firm* for, a *customer*;

where the *firm* does not give *advice on home finance transactions* to that particular *customer*, or where the *customer* has rejected such *advice* given by the *firm*.

**high net worth mortgage customer**

a *customer* with an annual net income of no less than £300,000 or net assets of no less than £3,000,000, or whose obligations are guaranteed by a person with an income or assets of such amount.

**high net worth illustration**

an *illustration* for a *regulated mortgage contract* to a *high net..."
worth mortgage customer.

**high net worth offer document**  
an offer document for a regulated mortgage contract to a high net worth mortgage customer.

**initial contact**  
the first occasion when a firm is in contact with the customer and may perform any of the following in relation to a home finance transaction:

(a) advising on the transaction;

(b) arranging (bringing about) the transaction; or

(c) entering into the transaction, when there is no firm arranging (bringing about) the transaction.

**interest roll-up mortgage**  
an interest-only mortgage under which neither capital repayments, nor payment of any of the interest accruing under its terms, are required or anticipated until it comes to an end, whether on expiry of the term (if any), discharge of the mortgage or the happening of some other event.

**payment shortfall**  
the outstanding amount to be paid measured against the amount of payments which have become due during the term of a regulated mortgage contract or home purchase plan, including any arrears amount due.

**professional customer**  
a customer who works or has recently worked in the home finance sector for at least one year in a professional position, which requires knowledge of the home finance transactions or home finance services envisaged, and who the firm reasonably believes to be capable of understanding the risks involved in the transaction or transactions contemplated.

Amend the following definitions as shown.

**combined initial disclosure document**  
information about the breadth of advice, scope of advice or scope of basic advice and the nature and costs of the services offered by a firm in relation to either:

(a) two or more of the following:

   (a i) packaged products or, for basic advice, stakeholder products that are not a group personal pension scheme or a group stakeholder pension scheme (but only if a consultancy charge will be made);

   (b ii) non-investment insurance contracts;

   (e iii) regulated mortgage contracts home finance
transactions (other than lifetime mortgages, regulated sale and rent back agreements); or

(d) home purchase plans;

(e) equity release transactions;

(b) home finance transactions (other than regulated sale and rent back agreements) only;

which contains the keyfacts logo, headings and text in the order shown in, and in accordance with the notes in, COBS 6 Annex 2.

**early repayment charge** (in MCOB and BSOCS) a charge levied by the mortgage lender on the customer in the event that the amount of the loan is repaid in full or in part before a date or event specified in the contract.

**initial disclosure document** information about the scope of advice and the nature of the services offered by a firm in relation to:

(a) a regulated mortgage contract other than a lifetime mortgage as required by MCOB 4.4.1R(1) and set out in MCOB 4 Annex 1R;

(b) an equity release transaction as required by MCOB 4.4.1R(1) and set out in MCOB 8 Annex 1R;

(c) a home purchase plan as required by MCOB 4.4.1R(1) and set out in MCOB 4 Annex 1R; or

(d) a non-investment insurance contract in accordance with ICOBS 4.5.1G and set out in ICOBS 4 Annex 1G.

**repayment mortgage** a regulated mortgage contract under which the customer is obliged to make payments of interest and capital which are designed to repay the mortgage in full over the stated term.

**repayment vehicle strategy** the means by which the customer will intend to repay the outstanding capital due and, where applicable, pay the interest accrued under the regulated mortgage contract, where all or part of that contract is an interest-only mortgage.
Annex B

Amendments to the Training and Competence sourcebook (TC)

In this Annex, underlining indicates new text.

Appendix 1

Activities and Products/Sectors to which TC applies subject to TC Appendices 2 and 3

<table>
<thead>
<tr>
<th>Activity</th>
<th>Products/Sectors</th>
<th>Is there an appropriate examination requirement?</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
<td></td>
<td></td>
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<tr>
<td><strong>Regulated mortgage activity and reversion activity carried on for a customer</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Advising; arranging (bringing about) or (for a mortgage lender or home reversion provider) an activity which would be arranging (bringing about) but for the exclusion in article 28A Regulated Activities Order (Arranging contracts to which the arranger is a party)</td>
<td>20</td>
<td>Regulated mortgage contracts for a non-business purpose</td>
</tr>
<tr>
<td></td>
<td>20 A</td>
<td>Regulated mortgage contracts for a business purpose</td>
</tr>
<tr>
<td></td>
<td>21</td>
<td>Equity release transactions</td>
</tr>
<tr>
<td>Designing scripted questions for non-advised execution-only sales</td>
<td>21 A</td>
<td>Regulated mortgage contracts for a non-business purpose</td>
</tr>
<tr>
<td>---</td>
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</tr>
<tr>
<td>21 B</td>
<td>Regulated mortgage contracts for a business purpose</td>
<td>No</td>
</tr>
<tr>
<td>22</td>
<td>Equity release transactions</td>
<td>Yes</td>
</tr>
<tr>
<td>Overseeing non-advised execution-only sales on a day-to-day basis</td>
<td>23</td>
<td>Equity release transactions</td>
</tr>
</tbody>
</table>

...
Appendix 4E – Appropriate Qualification tables

<table>
<thead>
<tr>
<th>Activity</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Activity number 20</td>
<td>Advising a customer on or arranging (bringing about) a regulated mortgage contract (for a non-business purpose) - Activity number 20 in TC Appendix 1.1.1R; and Designing scripted questions for use in execution-only sales to customers of regulated mortgage contracts for a non-business purpose - Activity number 21A in TC Appendix 1.1.1R</td>
</tr>
<tr>
<td>Activity number 21</td>
<td>Advising a customer on or arranging (bringing about) Equity release transactions - Activity number 21 in TC Appendix 1.1.1R</td>
</tr>
<tr>
<td>Activity number 22</td>
<td>Overseeing non-advised execution-only sales on a day-to-day basis on Equity release transactions – Activity number 23 in TC Appendix 1.1.1R</td>
</tr>
</tbody>
</table>
### TP 8  Transitional provisions relating to time limits for attaining qualifications

<p>| | |</p>
<table>
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<td>8.2</td>
<td>R</td>
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An employee who is carrying on the activities specified in TC Appendix 1 of:

1. arranging (bringing about) regulated mortgage contracts or home reversion plans or (for a mortgage lender or home reversion provider) an activity which would be arranging (bringing about) but for the exclusion in article 28A Regulated Activities Order (Arranging contracts to which the arranger is a party) for a non-business purpose; or

2. designing scripted questions for execution-only sales of regulated mortgage contracts for a non-business purpose;

as at 26 April 2014 will, for the purposes of TC 2.2A.1R, be regarded as carrying on such activities only with effect from that date; and, in relation to such an employee, a firm need not (in relation to such activities only) comply with TC 2.1.6R until 26 October 2016. TP 8.1 does not apply in respect of such an employee.
Annex C

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

6.2A Describing advice services

...  

6.2A.4 G (1) A firm that provides both independent advice and restricted advice should not hold itself out as acting independently for its business as a whole. However, a firm may hold itself out as acting independently in respect of its services for which it provides independent advice or advice which meets other independence requirements for particular investments. For example, a firm that provides independent advice on regulated mortgage contracts in accordance with MCOB but restricted advice on retail investment products will not be able to hold itself out as an independent financial adviser. However, it would be able to hold itself out as an adviser providing independent advice for regulated mortgage contracts provided it was made clear in accordance with the fair, clear and not misleading rule that it provided restricted advice for retail investment products.

(1A) A firm that offers an unlimited range of regulated mortgage contracts, or gives advice in relation to contracts of insurance on the basis of a fair analysis, but offers restricted advice on retail investment products should not hold itself out as acting independently for its business as a whole, for example by holding itself out as an independent financial adviser. However, it may disclose that it offers an unlimited range for regulated mortgage contracts or gives advice in relation to contracts of insurance on the basis of a fair analysis provided it makes clear in accordance with the fair, clear and not misleading rule that it provides restricted advice for retail investment products.

...  

6 Annex 2 Combined initial disclosure document described in COBS 6.3, ICOBS 4.5, MCOB 4.4.1R(1) and MCOB 4.10.2R(1) 4.4A.20G

...
2. Whose products do we offer? [Note 4] [Note 4A] [Note 6]

Home Finance Products [Note 13]

[Compliance with Islamic law [Note 18]]

Our services are regularly checked by [name(s) of scholar(s)] to ensure compliance with Islamic law. Ask us if you want further information about the role of our scholar(s).

[1] [Lifetime] [Mortgages] [Equity Release Products] and Islamic Home reversion schemes purchase plans [Note 13]

☐ We offer [lifetime] [mortgages] [home reversion plans] [equity release products] from the whole market.

☐ We [can] [Note 7] only offer [lifetime] [mortgages] [home reversion plans] [equity release products] from a limited number of [lenders / companies]. Ask us for a list of the [lenders / companies] we offer [lifetime] [mortgages] [home reversion plans] [equity release products] from. [Note 14]

☐ We [can] [Note 7] only offer [a limited range of the] [a] [lifetime] [mortgage] [s] home reversion plan [s] [equity release products] from [a single lender / company] [name of single lender / company]. [Note 11(1) and (3)] [Note 16]

[or]

We only offer our own [lifetime] [mortgages] [home reversions plan] [equity release products]. [Note 11(2)]

☐ We do not offer [lifetime mortgages] [home reversion plans]. [Note 12]

[2] [Islamic Home Purchase Plans] [Note 19] [Note 13]

☐ We offer Islamic home purchase plans from the whole market.

☐ We [can] [Note 7] only offer Islamic home purchase plans from a limited number of providers. Ask us for a list of the providers we offer Islamic home purchase plans from. [Note 14]
We [can] [Note 7] only offer [a limited range of the] [a] Islamic home purchase plan [s] from [a single provider] [name of single provider]. [Note 11(1) and (3)][Note 16]

[or]

We only offer our own Islamic home purchase plans. [Note 11(2)]

Equity release products are either lifetime mortgages or home reversion plans. [Note 5]

We are not limited in the range of [mortgages] [equity release products] [Islamic] [home purchase plans] we will consider for you [Note 7A]

[Compliance with Islamic law][Note 18]

Our services are regularly checked by [name(s) of scholar(s)] to ensure compliance with Islamic law. Ask us if you want further information about the role of our scholar(s).

3 Which service will we provide you with? [Note 4] [Note 4A] [Note 6] [Note 6A]

...
4 What will you have to pay us for our services? [Note 4A] [Note 20A]

... [Home Finance Products] [Note 13]

[1] [Mortgages] [Equity Release Products] [Islamic] [Home Purchase Plans] [Note 13]

- No fee. [We will be paid by commission from the [lender/company that buys your home provider].] [Note 33]
- A fee of £[ ] payable at the outset and £[ ] payable when you apply for a [lifetime] [mortgage] [home reversion plan] [equity release product] [Islamic] [home purchase plan]. [We will also be paid commission from the [lender/company that buys your home provider]]. [Note 33] [Note 34]

You will receive a key facts illustration when considering a particular [lifetime] [mortgage] [home reversion plan] [equity release product], which will tell you about any fees relating to it. [Note 13] [Note 13A]

Refund of fees [Note 32] [Note 13]
If we charge you a fee, and your [lifetime] [mortgage] [home reversion plan] [Islamic] [home purchase plan] does not go ahead, you will receive: [Note 35]

- A full refund [if the [lender/company provider] rejects your application]. [Note 36]
- A refund of £[ ] [if your application falls through]. [Note 36] [Note 37] [Note 38]
- No refund [if you decide not to proceed]. [Note 36]

[2] [Islamic Home Purchase Plans] [Note 13]

- No fee. [We will be paid by commission from the provider.] [Note 33]
- A fee of £[ ] payable at the outset and £[ ] payable when you apply for an Islamic home purchase plan. [We will also be paid commission from the provider]. [Note 38]

Refund of fees [Note 35]
If we charge you a fee, and your Islamic home purchase plan does not go ahead, you will receive: [Note 32]

☐ A full refund [if the provider] rejects your application. [Note 36]

☐ A refund of £ [ ] [if your application falls through]. [Note 36] [Note 37] [Note 38]

☐ No refund [if you decide not to proceed]. [Note 36]

8 Are we covered by the Financial Services Compensation Scheme (FSCS)? [Note 4A] [Note 39] [Note 55] [Note 56]

...  

[Note 59] Message from the Financial Services Authority

Think carefully about this information before deciding whether you want to go ahead.

If you are at all unsure about which equity release product is right for you, you should ask your adviser to make a recommendation.

...  

Note 4 – a firm should describe the services that it expects to provide to the particular client. For services in relation to:

...  

- equity release transactions – the firm should select a maximum of two boxes within this section. Firms should not omit the boxes not selected.

- home finance transactions (other than regulated sale and rent back agreements) – where the firm will be providing services to a consumer by way of a distance contract, it should include in Section 3 a statement that explains whether or not the consumer will receive advice as part of the services. It should insert the appropriate heading above the statement in accordance with Note 13 (1).

Note 4A - If a firm is not offering all product types it should omit the headings and text relating to the product types it is not offering. For example, if it is completing the relevant sections of this template in relation to insurance and home finance products but not investment products, it should omit the heading “Investment” and the corresponding text.

Note 5 – a firm should include this sentence if, and only if, it offers equity release transactions.
Note 6A – If the combined initial disclosure document is used only in relation to home finance transactions (except where Section 3 is required to be used for home finance transactions as the firm is providing services by way of a distance contract; see Note 4), the firm should delete this heading and re-number the later sections accordingly.

Note 7 – Insert “can” if the firm’s range of products is determined by any contractual obligation. This does not apply where a product provider, or insurer, lender, home purchase provider or home reversion provider is selling its own products.

Note 7A - This sentence must only be used where there are no limitations in the product range that a firm will be providing to the customer. Otherwise, the firm must insert alternative text that describes in simple, clear terms the limits on its product range for the relevant market. If the firm is not considering products from a comprehensive range across the market and has not listed here the name of every lender/provider it offers products from, the text used must offer a list of these lenders/providers. Where the firm offers equity release products, it must state if it offers home reversion plans but not lifetime mortgages, or vice versa. The firm must also state that it will not consider direct deals, where that is the case. Depending on the firm’s precise circumstances, the following examples may be appropriate:

- “We offer a comprehensive range of [mortgages] [equity release products] [Islamic] [home purchase plans] from across the market, but not deals that you can only obtain by going direct to a [lender/provider].”

- “We only offer products from [number] [lenders/providers]. We can provide you with a list of these.”

- “We only offer some, but not all, of the [mortgages] [equity release products] [Islamic] [home purchase plans] from [number] [lenders/providers]. We can provide you with a list of these.”

- “We only offer the [mortgages] [equity release products] [Islamic] [home purchase plans] from [name of lender(s)/provider(s)].”

- “We only offer some, but not all, of the [mortgages] [equity release products] [Islamic] [home purchase plans] from [name of lender(s)/provider(s)].”

- “We only offer lifetime mortgages from [name of lender(s)] and home reversion plans from [name of provider(s)].”

- “We only offer [lifetime mortgages/home reversion plans] but not [lifetime mortgages/home reversion plans]. We only offer [lifetime mortgages/home reversion plans] from [name of provider] and we only offer some, but not all, of their products.”

- “We only sell bridging finance products from [name of lender(s)]. We do not offer products from across the mortgage market.”
Note 11 – if the firm selects this box, it will be offering the products of one provider for a particular product type. It should therefore follow the format specified in (1) below except when offering its own products, in which case it should follow (2) instead. In the case of non-investment insurance contracts, where the firm is providing a service in relation to different types of insurance, this box covers the situation where it is offering a particular type of insurance from a single insurance undertaking.

(1) Insert the name of the provider, namely the product provider for packaged products, and the insurance undertaking(s) for non-investment insurance contracts, the lender for regulated mortgage contracts and regulated lifetime mortgage contracts and the home reversion provider for home reversion plans. For example: “We can only offer products from [name of product provider]”. For non-investment insurance contracts the type of insurance offered should also be included. For example: “We only offer ABC’s household insurance and ABC’s motor insurance.” If the provider has only one product, the firm should amend the text to the singular – for example: “We can only offer a mortgage policy from [name of lender insurance undertaking]”. If the firm does not offer all of the home finance transactions generally available from that provider, it should insert the words “a limited range of” as shown in the specimen.

(2) If the firm is a product provider offering only its own products, or is part of a product provider offering only the products sold under that part’s trading name, it should use this alternative text.

(3) If the firm offers home reversion plans from only one reversion provider, and lifetime mortgages from only one lender, which is different from the reversion provider, then the firm should identify the lender and the reversion provider and specify the type of equity release transaction to which they relate. For example, “We can only offer lifetime mortgages from ABC Mortgages Ltd and home reversion plans from ABC Reversions Ltd.”

Note 12 – if the firm does not give personal recommendations advise or give personalised information on both types of equity release transactions, then it should indicate to the client the sector that the firm does not cover. However, if the firm’s scope of service does not include equity release transactions, the last box (‘We do not offer [lifetime mortgages] [home reversion plans]”), should be omitted.

Note 13 – in describing the services and products provided, firms should omit the text in brackets that do not apply and ensure that they describe accurately their activities with respect of the services and products that they offer, as follows:

(1) Headings and sub-headings:

   a. If the firm offers both a combination of regulated mortgage contracts and home purchase plans and equity release products, it should include the heading “Home Finance Products” in the combined initial disclosure document and describe the regulated mortgage contracts, and home purchase plans and equity release transactions (as applicable) that it offers under two separate sub-headings. The sub-headings (“Mortgages” and “Home Purchase Plans” and “Equity Release Products”) should be numbered accordingly. If the firm only
offers one of these two three products, then the heading “Home Finance Products” should be omitted and the heading will read “Mortgages” or “Home Purchase Plans” or “Equity Release Products”, as appropriate.

b. If the firm offers equity release transactions, then the appropriate heading “Home Finance Products” should be omitted and the or sub-heading will read is “Equity Release Products” (even if the firm offers equity release transactions from only one sector) only lifetime mortgages or only home reversion plans.

(2) Describing the products:

a. If a firm gives personal recommendations or gives personalised information advice on, or arranges execution-only sales in, lifetime mortgages, it should change “mortgage” to “lifetime mortgage”

b. If a firm gives personal recommendations or gives personalised information advice on, or arranges execution-only sales in, home reversion plans, it should use the text in brackets relating to home reversion plans.

c. If the firm gives personal recommendations or gives personalised information advice on, or arranges execution-only sales in, products from both equity release market sectors, then it should use the term ‘equity release products’ when referring to them collectively.

(3) Describing the provider: If a firm gives personal recommendations or gives personalised information advice on, or arranges execution-only sales in, home purchase plans or home reversion plans, it should change “mortgage” to “product” and “lender” to “company” or “provider”, as appropriate.

(4) Home purchase plans: A firm that carries on home purchase activities may add the word “Islamic” to “home purchase plan(s)” if it holds out one or more home purchase plans within its product range as compliant with Islamic law. If “Islamic” is included, it should be included consistently throughout the document. However, a firm may omit the word “Islamic” in sections 5 and 8 even if it uses it elsewhere throughout the document. A firm that wishes to hold itself, its products or services out as compliant with religious or philosophical belief other than Islamic law may include an appropriate description in place of the references to “Islamic” and “Islamic law”.

(5) A firm offering services in relation to loans for business purposes must use a description of its services which make that clear.

Note 13A – A firm must not include this paragraph if the only services to which the combined initial disclosure document relates are activities relating to home purchase plans. A firm may include a similar explanation regarding the financial information statement if the services they offer include activities relating to home purchase plans.
Note 14 – for services provided in relation to home finance transactions, this sentence is required only where a firm selects this service option. It may also be omitted if a firm chooses to list all of the lenders, home purchase providers and home reversion providers it offers home finance transactions from in the previous line, so long as the firm offers all of the products generally available from each.

…

Note 16 – if the firm does not select this box, it should alter the wording to say “a single group of companies” for packaged products; and “a single insurer” for non-investment insurance contracts, “a single lender” for regulated mortgage contracts or lifetime mortgages and “a single company” (or “a single provider”) for home purchase plans and home reversion plans. For example: “We only offer the products from a single group of companies” should replace the text in the specimen combined initial disclosure document.

…

Note 18 – This subsection is optional unless may (at the firm’s option) be used if, and only if, the firm holds itself, its regulated mortgage contract or home purchase plan products or services out as compliant with Islamic law in the combined initial disclosure document. If a firm includes this section it should describe it as Section 2 and renumber subsequent sections accordingly.

A firm that wishes to hold itself, its regulated mortgage contract or home purchase plan products or services out as compliant with religious or philosophical beliefs other than Islamic law in the combined initial disclosure document may also use the subsection in accordance with this note and modify the wording in the section to the extent appropriate.

Note 19 – A firm that carries on home purchase activities may omit the word “Islamic” from “Islamic home purchase plan(s)” if one or more home purchase plans within its scope of service is not held out as compliant with Islamic law. If “Islamic” is omitted, it should be omitted consistently throughout the document. However, a firm may omit the word “Islamic” in sections 5 and 8 without having to omit it throughout the document. A firm that wishes to hold itself, its products or services out as compliant with religious or philosophical belief other than Islamic law in the combined disclosure document may make appropriate amendments to references to “Islamic” and “Islamic law”.

…

Note 34 – insert a plain language description of when any fees are payable for services relating to home finance transactions, and the amount. This description could include, for example, a cash amount, a percentage of the loan or reversion amount or the amount per hour, as appropriate. However, where a cash amount is not disclosed, one or more examples of the cash amount should be included. If a firm offers more than one pricing option in relation to equity release transactions, it should specify the pricing policy for each of them. For example, “A fee of £[XX] payable at the outset and £[YY] when you apply for a lifetime mortgage and £[ZZ] when you apply for a home reversion plan”. If a firm does not charge a fee, the text for the second box should be abbreviated to ‘A fee’. The fee must be described, where possible, as a cash sum, but where this is not possible:
• If the fee is a percentage of another sum which is not yet known (such as the amount to be borrowed), give the percentage and a representative illustrative example which gives an amount as a cash sum.

• If the fee will be one of a range of possible cash fees, provide a description of the fee in terms which include the maximum and minimum possible fees as cash sums, and what factors will determine where in the range the fee will be.

• If the fee will be one of a range of fees that are a percentage of another sum which is not yet known (such as the amount to be borrowed), give the minimum and maximum percentages and a representative illustrative example which gives an amount as a cash sum, and set out what factors will determine where in the range the fee will be.

• If the fee will be based on an hourly rate, but the number of hours to be spent on the customer’s transaction is unknown, state the hourly rate in cash terms and set out what factors will determine how many hours it takes to provide the firm’s services.

Note 39 – the firm may omit this section for services relating to packaged products if the firm has, on first contact with the client, provided the client with its client agreement which contains that information. This section may be omitted for services relating to non-investment insurance contracts if the information covered by this section is not required by ICOBS or is required by ICOBS but is provided to the customer by some other means. This section may be omitted for services relating to home finance transactions in accordance with MCOB 4.4.1R(3). If this section is omitted, the other sections of the combined initial disclosure document should be renumbered accordingly.

Note 59 – this warning box should be added when the firm sells lifetime mortgages or home reversion plans or both.
Annex D

Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Part 1: Comes into force on 26 April 2014

1.2 General application: who? what?

1.2.1 R (1) This sourcebook applies to every firm that:

(a) carries on a home finance activity (subject to the business loan and loans to high net worth mortgage customers application provisions); or

... 

Firm types and the home finance activities

1.2.2 G (1) This sourcebook applies to activities carried out in respect of four types of product: regulated mortgage contracts (which includes lifetime mortgages), equity release transactions, home purchase plans, home reversion plans and regulated sale and rent back agreements...

... 

Business loans and loans to high net worth mortgage customers: application of MCOB

1.2.3 R In relation to a regulated mortgage contract for a business purpose

(1) MCOB applies if the customer is not a large business customer; and

(2) if MCOB applies, a firm must either:

(a) comply with MCOB in full (disregarding the tailored provisions for regulated mortgage contracts for a business purpose in the remainder of MCOB); or

(b) comply with MCOB in full, but taking account of all those tailored provisions, including MCOB 1.2.7R.

1.2.3A R In relation to a regulated mortgage contract with a high net worth mortgage customer, a firm must either:
(a) comply with MCOB in full (disregarding the tailored provisions for regulated mortgage contracts with high net worth mortgage customers in the remainder of MCOB); or

(b) subject to MCOB 1.2.9CR, comply with MCOB in full, but taking account of all those tailored provisions, including MCOB 1.2.7R.

1.2.3B R Where any provision of MCOB is expressed to apply in respect of a high net worth mortgage customer, it applies in respect of joint borrowers (or potential borrowers) if one of them satisfies that definition in his own right.

1.2.4 G For detail of the tailored provisions applying, see are those in the sections section on ‘business loans’ and loans to high net worth mortgage customers: tailored provisions’ set out in each relevant chapter.

1.2.4A G Certain other provisions of MCOB apply in all cases in respect of high net worth mortgage customers or of transactions which are solely for a business purpose. The application of the tailored and other provisions for high net worth mortgage customers and transactions for a business purpose are summarised in the table at MCOB 1.2.4BG.

1.2.4B G Table of provisions applicable to business loans and high net worth mortgage customers: this table belongs to MCOB 1.2.4AG

<table>
<thead>
<tr>
<th>Provisions</th>
<th>Tailored provisions or applicable in all cases?</th>
<th>For business loans only, are the provisions applicable to all business loans, or only where the loan is solely for a business purpose?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Various of the provisions in MCOB 4.7A and MCOB 4.8A</td>
<td>Applicable in all cases</td>
<td>Applicable only where loan is solely for a business purpose</td>
</tr>
<tr>
<td>MCOB 4.9</td>
<td>Tailored</td>
<td>Applicable to all business loans</td>
</tr>
<tr>
<td>MCOB 5.7</td>
<td>Tailored</td>
<td>Applicable to all business loans</td>
</tr>
<tr>
<td>MCOB 6.7</td>
<td>Tailored</td>
<td>Applicable to all business loans</td>
</tr>
<tr>
<td>MCOB 7.7</td>
<td>Tailored</td>
<td>Applicable to all business loans</td>
</tr>
</tbody>
</table>
Various of the provisions in MCOB 11.6 | Applicable in all cases | Applicable only where loan is solely for a business purpose

| MCOB 12.6 | Tailored | Applicable to all business loans |
| MCOB 13.7 | Tailored | Applicable to all business loans |

1.2.5  
(1) …

(2) Whether a regulated mortgage contract is, or is solely, for a business purpose will be a matter of fact to be determined by a firm (in accordance with MCOB 1.2.9DR where applicable) depending on the individual circumstances of each case…

…

Business loans and loans to high net worth mortgage customers: additional requirements if tailored route is used

1.2.7  
R In relation to a regulated mortgage contract for a business purpose or with a high net worth mortgage customer, if a firm has opted for the tailored route, it must adopt the following modifications to the sourcebook:

(1) (except in relation to sections 6 and 8 of any initial disclosure document or sections 5 and 8 of any combined initial disclosure document) substitute an alternative description of the facility provided under the regulated mortgage contract for 'mortgage' where that term is used in any disclosure;

(2) substitute the term 'illustration' for 'keyfacts illustration' when opting to use the tailored business loans or loans to high net worth mortgage customers rules in MCOB 4.9, MCOB 5.7, MCOB 6.7 or MCOB 7.7; and

…

1.2.8  
G (1) Firms are reminded of the requirement in MCOB 2.2.6R that any communication should be clear, fair and not misleading when substituting an alternative for the term 'mortgage' in accordance with MCOB 1.2.7R(1).

(2) Possible alternatives to the term 'mortgage' include, for example, 'secured business overdraft', 'secured loan' or 'secured business credit'.

1.2.9  
G The disclosure rules in MCOB place particular emphasis on the description of borrowing. Where the regulated mortgage contract is for
a business purpose or with a high net worth mortgage customer, a firm should reflect this emphasis in any disclosure by first describing any borrowing before addressing the other facilities provided under the regulated mortgage contract.

... Provisions for professional customers

1.2.9B G Certain provisions of MCOB 4.7A and MCOB 4.8A apply in respect of professional customers. Where they apply, they provide greater flexibility for firms.

Requirement for evidence before treating a loan as being solely for business purposes, or a customer as a high net worth mortgage customer or a professional customer

1.2.9C R A firm may not treat a customer as being a high net worth mortgage customer for the purposes of MCOB unless either:

(1) it is aware, from evidence already in its possession as a result of a business relationship between it and the customer, that the customer satisfies the definition of high net worth mortgage customer; or

(2) it has first obtained a written statement which:

(a) confirms that the customer satisfies the definition of high net worth mortgage customer;

(b) specifies the period for which it is valid, which includes the time when the regulated mortgage contract is entered into; and

(c) is signed by a suitably qualified professional adviser of the customer who is not an associate of the firm or of the customer.

1.2.9D R A firm must not treat a loan as being solely for a business purpose for the purposes of MCOB unless it has reviewed a business plan provided by the customer which provides credible evidence that that is the case.

1.2.9E R A firm must not treat a customer as being a professional customer for the purposes of MCOB unless it has credible evidence that the customer satisfies the definition.

1.2.9F R A firm must keep the evidence in MCOB 1.2.9CR(1) and MCOB 1.2.9ER, the business plan in MCOB 1.2.9DR and the written statement in MCOB 1.2.9CR(2) for not less than three years from the date on which it was obtained or, if later, used to satisfy MCOB 1.2.
Authorised professional firms

1.2.10 R  MCOB does not apply to an authorised professional firm with respect to its non-mainstream regulated activities except for:

... 

(2)  ... and

(3)  initial disclosure requirements but only as regards providing the information contained in section 7 (What to do if you have a complaint) and section 8 (Are we covered by the Financial Services Compensation Scheme?) of an initial disclosure document or combined initial disclosure document (see MCOB 4.4 and MCOB 4.10). [deleted]

... 

1.3 General application: where?

... 

Distance contracts entered into from an establishment in another EEA State

1.3.4 R  ...

(2)  The rules which do not apply are:

(a)  initial disclosure requirements in MCOB 4.4 4.4A (in respect of regulated mortgage contracts)...

... 

(g)  MCOB 8.3 (Application of rules in MCOB 4) to the extent that it applies MCOB 4.4 4.4A to MCOB 4.6;

... 

... 

2.1 Application

Who?

... 

2.1.2 R  This table belongs to MCOB 2.1.1 R

<table>
<thead>
<tr>
<th>(1) Category of firm</th>
<th>(2) Applicable section</th>
</tr>
</thead>
<tbody>
<tr>
<td>mortgage lender</td>
<td>whole chapter except MCOB 2.2.6AR, MCOB 2.2.8AR, MCOB 2.2.8BG, MCOB 2.6A,1R to</td>
</tr>
<tr>
<td>mortgage administrator</td>
<td>2.6A.18G and MCOB 2.8.6G</td>
</tr>
<tr>
<td>-------------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>mortgage adviser</td>
<td>As for a mortgage lender, except that MCOB 2.6A.1R does not apply.</td>
</tr>
<tr>
<td>mortgage arranger</td>
<td>2.6A.18G and MCOB 2.8.6G</td>
</tr>
<tr>
<td>home purchase provider</td>
<td>MCOB 2.1, MCOB 2.2.1G, MCOB 2.2.6R to MCOB 2.2.9G, MCOB 2.5, to MCOB 2.6, MCOB 2.6A.1R to MCOB 2.6A.4G, MCOB 2.6A.7G to MCOB 2.6A.10G, MCOB 2.7.4R to MCOB 2.7.6R, MCOB 2.7A and MCOB 2.8.6G</td>
</tr>
<tr>
<td>SRB administrator</td>
<td>MCOB 2.1, MCOB 2.2.1G, MCOB 2.2.2G, MCOB 2.2.3R, MCOB 2.2.6R, MCOB 2.2.7G, MCOB 2.2.8G, MCOB 2.5, to MCOB 2.6, MCOB 2.6A.5BR(5), MCOB 2.6A.8R to MCOB 2.6A.11G, MCOB 2.6A.17AR, MCOB 2.6A.18G, MCOB 2.7.1G to MCOB 2.7.5R, MCOB 2.7A, MCOB 2.8.1G to MCOB 2.8.5G.</td>
</tr>
</tbody>
</table>

**2.2 Communications**

**2.2.5** Firms are reminded that they should follow the relevant rules in COBS 6 and COBS 13 relating to advice and disclosure on investments if they are advising the customer on an investment such as an annuity associated with an equity release transaction or an ISA used as a repayment vehicle strategy.

**2.5A The customer’s best interests**

**2.5A.1** A firm must act honestly, fairly and professionally in accordance with the...
best interests of its customer.

...  

2.6A Protecting customer’s interests: regulated mortgage contracts, home purchase plans, home reversion plans and regulated sale and rent back agreements

Protecting customer’s interests: regulated mortgage contracts

2.6A-1 R A mortgage lender may only include, or rely on, a term in a regulated mortgage contract which permits it to change the rate of interest from a fixed, discounted or other concessionary rate to the firm’s standard variable rate in the event of a breach of contract if each of the following conditions is met:

(1) the breach of contract is material;

(2) the breach of contract is unrelated to a payment shortfall; and

(3) that standard variable rate is not an interest rate created especially for customers who are (either at all, or in particular ways) in breach of contract.

...  

Protecting customers’ interests under regulated sale and rent back agreements: security of tenure

2.6A.5B R (1) When entering into a regulated sale and rent back agreement, a firm must ensure that, under the terms of the regulated sale and rent back agreement:

...  

(2) When entering into a regulated sale and rent back agreement, a firm must ensure that, under the terms of the regulated sale and rent back agreement, if the property is in England and Wales, the terms of the tenancy do not:

...  

(3) When entering into a regulated sale and rent back agreement, a firm must ensure that, under the terms of the regulated sale and rent back agreement, if the property is in Scotland, the terms of the tenancy do not include:

...  

(4) When entering into a regulated sale and rent back agreement, a firm must ensure that, under the terms of the regulated sale and rent back agreement, if the property is in Northern Ireland,
the terms of the tenancy do not include:

...

3.8 Form and content of real time qualifying credit promotions

...

3.8.6 G Firms should note the additional disclosure requirements in MCOB 4.4.7R (Disclosure 4.4A.17R (Additional disclosure where initial contact is by telephone), MCOB 4.4A.18R (Additional disclosure requirements where the services are to be provided to a consumer under a distance contract) and MCOB 4.5 (Additional disclosure for distance mortgage mediation contracts and distance home purchase mediation contracts with retail customers) in relation to telephone calls that may fall within the definition of a financial promotion.

...

4.1 Application

Who?

...

4.1.2 R Table This table belongs to MCOB 4.1.1R

<table>
<thead>
<tr>
<th>Category of firm</th>
<th>Applicable section</th>
</tr>
</thead>
<tbody>
<tr>
<td>mortgage lender</td>
<td>except in relation to lifetime mortgages: MCOB 4.1 to MCOB 4.4 4.4A, 4.6A, and MCOB 4.8 4.8A in accordance with MCOB 4.1.2A R, to and MCOB 4.9</td>
</tr>
<tr>
<td>mortgage adviser</td>
<td>except in relation to lifetime mortgages: whole chapter except MCOB 4.10</td>
</tr>
<tr>
<td>mortgage arranger</td>
<td>except in relation to lifetime mortgages: whole chapter except MCOB 4.7 4.7A and MCOB 4.10</td>
</tr>
<tr>
<td>home purchase provider</td>
<td>MCOB 4.1, MCOB 4.2 and MCOB 4.10 (except MCOB 4.10.5G to MCOB 4.10.7G). MCOB 4.3, MCOB 4.4 4.4A and MCOB 4.8 4.8A in accordance with MCOB 4.1.2BR and MCOB 4.10</td>
</tr>
</tbody>
</table>
4.1.2A R MCOB 4.8A only applies to a mortgage lender in relation to entering into a regulated mortgage contract where there is no firm which is arranging (bringing about) the regulated mortgage contract to which MCOB 4.8A applies.

4.1.2B R MCOB 4.8A only applies to a home purchase provider (as provided in MCOB 4.10.9BR) in relation to entering into a home purchase plan where there is no firm which is arranging (bringing about) the home purchase plan to which MCOB 4.8A applies (as provided in MCOB 4.10.9BR).

4.1.2C G MCOB 4.1.2AR and MCOB 4.1.2BR mean that the provisions in MCOB 4.8A on execution-only sales, including the prohibition on entering into them in the circumstances specified in that section, only apply to sales by mortgage lenders or home purchase providers where there is no intermediary firm to which that section applies.

4.1.2D G MCOB 4.1.2AR and MCOB 4.1.2BR mean that the situations where MCOB 4.8A applies to a mortgage lender or home purchase provider include where a mortgage intermediary or home purchase intermediary has been involved in arranging a regulated mortgage contract or home purchaser plan but is no longer involved in the transaction.

What?

4.1.3 R This chapter applies if a firm in the course of carrying on a home finance activity enters into, advises on or arranges a home finance transaction or a variation of the terms of a home finance transaction.

(1) makes, or anticipates making, a personal recommendation about; or
(2) gives, or anticipates giving, personalised information relating to;
the customer

(3) entering into a home finance transaction; or

(4) varying the terms of a home finance transaction entered into by the
customer.

4.1.5 R means that this chapter, MCOB 4, deals with standard
regulated mortgage contracts, home purchase plans and regulated sale
and rent back agreements only and therefore firms should note that the
scope of service rules in this chapter do not apply in respect of equity
release transactions. [deleted]

4.2 Purpose

4.2.1 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 home
finance transactions. In particular firms need to make clear to
customers the scope range of home finance transactions
available from them firms and the basis of their remuneration;
and

(b) where advice is given, it is suitable for the customer. The
steps firms need to take to ensure that the customer receives
suitable advice will vary depending on the demands and
needs of the customer and the type of home finance
transaction;

(c) the firm provides advice whenever it makes a sale during
which there is spoken or other interactive dialogue between
the firm and the customer (with exceptions for high net worth
mortgage customers and professional customers, and for
loans which are solely for a business purpose);

(d) when there is no spoken or other interactive dialogue between
the firm and the customer during the sale, the firm is able to
provide an execution-only service except for certain
vulnerable customers (customers for regulated sale and rent
back and equity release transactions; customers whose main
purpose is debt consolidation; and customers who are using the transaction in order to exercise a statutory “right to buy”) who are given advice in every case;

(e) execution-only sales are only provided where the customer has been warned about the implications of proceeding without advice, or where the customer has rejected advice which has been given, and has specifically instructed the firm that he wishes to do so; and

(f) except in the case of regulated sale and rent back transactions, customers have the right to reject advice and proceed on an execution-only basis.

(3) This chapter also implements certain requirements of the Distance Marketing Directive in relation to distance mortgage mediation contracts and distance home purchase mediation contracts.

The existing section 4.3 is deleted in its entirety. The existing text is not struck through.

4.3 Scope of service provided [deleted]

MCOB 4.4 is deleted in its entirety and replaced with a new section MCOB 4.4A. The deleted text is not shown and the new text is not underlined.

4.4 Initial disclosure requirements [deleted]

4.4A Initial disclosure requirements

Description of a firm’s services in all cases

4.4A.1 R Using the methods and at the times specified in this section, a firm must provide the customer with the following information:

(1) whether there are any limitations in the range of products that it will offer to the customer, and if so what those are; and

(2) the basis on which the firm will be remunerated.

Range of products

4.4A.2 R (1) The limitations in MCOB 4.4A.1R include any limitations on the regulated mortgage contracts the firm will consider from within the relevant market. A firm which is offering services to a customer in
respect of more than one type of relevant market must describe its services in relation to each such relevant market.

(2) For these purposes, there are two relevant markets for regulated mortgage contracts (apart from lifetime mortgages): one for regulated mortgage contracts that are not for a business purpose; and one for regulated mortgage contracts that are. A firm offering services in relation to loans for a business purpose must make that clear in its disclosure under MCOB 4.4A.1R(1).

(3) If a firm will not, as part of its services, consider direct deals, it need not treat that as a limitation in its product range, but the firm must tell the customer as part of the disclosure under MCOB 4.4A.1R(1) that it will not consider direct deals.

4.4A.3 G (1) A firm that only offers products from one part of a relevant market (for example, just bridging loans) should not disclose its service as unlimited.

(2) When considering whether there are any limitations in its product range across the relevant market, a firm need not take account of the existence of exclusive deals which a mortgage lender offers to be sold by one or a limited number of mortgage intermediaries only (and not generally by mortgage intermediaries across the relevant market).

4.4A.4 R (1) If a firm is not offering to the customer products from an unlimited range from across the relevant market, its disclosure on product range in MCOB 4.4A.1R must either:

(a) list the names of all the mortgage lenders whose products it is offering; or

(b) inform the customer of the number of mortgage lenders whose products it is offering and that he has the right to request a list of those mortgage lenders.

(2) If a customer requests the list in (1), the firm must provide it in a durable medium as soon as possible following the request and in any event within five business days. The list must also indicate whether the firm offers all of the products generally available from each mortgage lender on the list.

4.4A.5 G A firm may be able to describe its product range as unlimited even if it offers its customers only a selection of the regulated mortgage contracts available from the relevant market, or uses ‘panels’. The firm would need to ensure that any panel, or selection of products, is sufficiently broad in its composition that it is representative of products from across the market, that it is reviewed regularly, and that its use does not materially disadvantage any customer. In such a case, a firm should ensure that its analysis of the market and of the available regulated mortgage contracts is kept adequately up to date. For example, a firm would need to update its selection of regulated mortgage
contracts if it became aware that a regulated mortgage contract had become generally available offering an improved product feature, or a better interest rate, when compared with the regulated mortgage contracts currently in the firm’s selection.

4.4A.6 G The disclosure required by MCOB 4.4A.1R(1), MCOB 4.4A.2R and MCOB 4.4A.4R(1) about limitations in product range and direct deals should be expressed in simple, clear terms. A firm may wish to consider using a sentence appropriate to the circumstances, along the following lines:

- “We are not limited in the range of mortgages we will consider for you.”
- “We offer a comprehensive range of mortgages from across the market, but not deals that you can only obtain by going direct to a lender.”
- “We only offer mortgages from [number] lender(s). We can provide you with a list of these.”
- “We only offer mortgages from [name of lender(s)].”
- “We only offer some, but not all, of the mortgages from [number] lender(s). We can provide you with a list of these.”
- “We only offer some, but not all, of the mortgages from [name of lender(s)].”
- “We only sell bridging finance products from [name of lender(s)]. We do not offer products from across the mortgage market.”

4.4A.7 G (1) Firms are reminded that, in the light of the rules and guidance in SYSC, they should have adequate systems and controls in place to ensure that the disclosure they make to a customer about their service reflects the service the customer is actually offered.

(2) Firms are also reminded that Principle 7 (Communications with clients) and MCOB 2.2.6R (Clear, fair and not misleading communications) are also relevant to how they describe their services, including in any business name they adopt. For example, a firm should not call itself an “independent mortgage adviser” unless its product range across the relevant market is unlimited.

(3) A firm that offers a different service for different product types should not disclose that it offers one type of service for its business as a whole. For example, a firm that provides independent advice on retail investment products but only offers a limited range of regulated mortgage contracts should ensure it discloses to the customer that the service is different for the different products.

(4) There are additional rules about complying with MCOB 4.4A.1R(1) in relation to home purchase plans and equity release transactions at
Basis of remuneration

4.4A.8 R (1) The information about the basis of remuneration required by MCOB 4.4A.1R(2) must include all relevant information, including the following details:

(a) any fees which the firm will charge to the customer;
(b) when any such fees will be payable and, if applicable, reimbursable; and
(c) whether the firm will receive commission from a third party and, if applicable, any arrangements for offsetting this against any fees charged.

(2) The details in (1)(a) must be expressed, where possible, as a specific cash sum, but the following rules apply where this is not possible:

(a) If the firm will charge a fee that is a percentage of another sum which is not yet known (such as, but not limited to, the amount to be borrowed), the firm must provide details of the percentage and a representative illustrative example which gives an amount as a cash sum.
(b) If the firm will charge one of a range of possible cash fees, the firm must provide a description of the fee in terms which include the maximum and minimum possible fees as cash sums, and what factors will determine where in the range the fee will be.
(c) If the firm will charge one of a range of fees that are a percentage of another sum which is not yet known (such as, but not limited to, the amount to be borrowed), the firm must provide details of the minimum and maximum percentages and a representative illustrative example which gives an amount as a cash sum, and set out what factors will determine where in the range the fee will be.
(d) If the firm will charge an amount based on an hourly rate, but the number of hours to be spent on the customer’s transaction is unknown, the firm must state the hourly rate in cash terms and set out what factors will determine how many hours it takes to provide the firm’s services.

Method of providing initial disclosure in all cases

4.4A.9 R The information required by MCOB 4.4A.1R, MCOB 4.4A.2R, MCOB 4.4A.4R(1) and MCOB 4.4A.8R must be communicated clearly and prominently, and in doing so:
(1) if the initial contact includes spoken interaction, the information must be communicated orally; and

(2) if the initial contact does not include spoken interaction, the messages must appear separately from other messages in the communication.

If the initial contact is made by electronic means, the firm must ensure that the customer cannot progress to the next stage of the sale unless the information has been communicated to the customer.

4.4A.10 G (1) In order to comply with MCOB 4.4A.9R for an internet sale, a firm should display the required information on a screen which the customer must access as part of the sales process. It would not be sufficient for the information to be accessible only by giving the customer the option to click on a link or download a document. The messages could be displayed clearly on one of the initial pages which the customer accesses.

(2) In a postal sale, a firm may comply by setting out the messages in a clear covering letter.

(3) Where the initial contact is by email, SMS or instant messaging, the messages could be displayed clearly and prominently early on in the body of the email, SMS or instant messaging.

(4) For face-to-face and telephone contact, a firm should comply by building the messages into the initial oral discussion with the customer.

4.4A.11 G A firm may demonstrate compliance with MCOB 4.4A.9R(1) by, for example, undertaking one or more of the following: building a requirement for oral communication of the relevant information into its training of staff as evidenced by its training and compliance manuals; inserting appropriate prompts into paper-based or automated sales systems; and having procedures in place to monitor compliance by staff with that rule. What is required in each case will depend on all the circumstances.

Timing of initial disclosure in all cases

4.4A.12 R The information required by MCOB 4.4A.1R, MCOB 4.4A.2R, MCOB 4.4A.4R(1) and MCOB 4.4A.8R must be provided during the course of the initial contact.

4.4A.13 G (1) In many cases, MCOB 4.4A.12R means that information will be given at the time of the first contact between the firm and the customer. However, there may be circumstances, for example in relation to a loan for a business purpose, where the possibility of the customer entering into, or varying the terms of, a regulated mortgage contract is only identified after preliminary discussions. The relevant disclosure is only required once this possibility is identified.

(2) MCOB 4.4A.12R does not require a firm to provide the information
specified in that rule when a customer contacts a firm simply to arrange to receive services in relation to a regulated mortgage contract at a later time, such as when a customer books an appointment. In those cases, the initial disclosure should be made when the firm first makes contact with the customer with a view to actually carrying out the services. However, firms should note the additional disclosure requirements in MCOB 4.5 (Additional disclosure for distance mortgage mediation contracts with retail customers), and the need to ensure that the required information is provided in good time (see MCOB 4.5.3G(1)).

4.4A.14 G Principle 7 and MCOB 2.2.6R also mean that, if initial disclosure has been given but any of the information in it (for example the basis on which the firm will be remunerated) subsequently changes, the firm should bring this clearly to the customer’s attention.

Instances where initial disclosure need not be given

4.4A.15 R The information requirements in MCOB 4.4A.1R, MCOB 4.4A.2R, MCOB 4.4A.4R(1) and MCOB 4.4A.8R do not apply where:

(1) the information has already been provided by the firm and the firm has good reason to believe that it is still accurate and appropriate for the customer; or

(2) the information has already been provided by the firm which first made contact with the customer in respect of the particular regulated mortgage contract, and the firm subsequently making contact with the customer does not expect to alter or replace the product range or basis of remuneration described in that information.

4.4A.16 G A mortgage lender should provide the information in the provisions referred to in MCOB 4.4A.15R in a direct sale but need not do so where the sale is through a mortgage intermediary. If a number of different firms are involved in relation to the transaction, having regard to MCOB 2.5.4R(2), those firms should take reasonable steps to establish that the customer has been provided with the information as required by this section.

Additional disclosure where initial contact is by telephone

4.4A.17 R If the initial contact is by telephone, then the firm must also, before proceeding further, give the name of the firm and (if the call is initiated by or on behalf of the firm) the commercial purpose of the call.

Additional disclosure where the services are to be provided to a consumer under a distance contract

4.4A.18 R Where a firm provides services to a consumer by way of a distance contract, the firm must provide the consumer with the following information in a durable medium in good time before the distance contract has been agreed:

(1) the information which is required by MCOB 4.4A.1R to MCOB
4.4A.8R;

(2) whether or not the firm will be providing the consumer with advice;

(3) the name and the main business of the firm, the geographical address at which it is established and any other geographical address relevant for the consumer’s relations with the firm;

(4) an appropriate statutory status disclosure statement (see GEN 4), a statement that the firm is on the FSA Register and its FSA registration number;

(5) the total price to be paid by the consumer to the firm for the financial service, including all related fees, charges and expenses, and all taxes paid through the firm or, when an exact price cannot be indicated, the basis for the calculation of the price enabling the consumer to verify it;

(6) the arrangements for payment and for performance;

(7) how to complain to the firm, whether complaints may subsequently be referred to the Financial Ombudsman Service and, if so, the methods for having access to it, together with equivalent information about any other applicable named complaints scheme;

(8) whether compensation may be available from the compensation scheme, or any other named compensation scheme, if the firm is unable to meet its liabilities, and information about any other applicable named compensation scheme; and

(9) any other contractual terms and conditions of the distance contract.

4.4A.19 G (1) MCOB 4.4A.18R contains the additional disclosure requirements for firms providing mortgage mediation activities to a consumer by way of a distance contract. MCOB 4.5 and MCOB 4.6 contain further rules and guidance applicable where firms enter into a distance contract in respect of their home finance mediation activities independent of any contractual arrangement with a consumer relating to a particular home finance transaction or transactions.

(2) There is guidance on distance contracts and consumers at MCOB 1.3.5G and MCOB 1.3.6G.

4.4A.20 G If used in accordance with its notes and provided to the customer at the correct time, using a combined initial disclosure document in a durable medium may satisfy the requirements of MCOB 4.4A.18R, though firms should consider whether it contains all the contractual terms and conditions of the distance contract.

Uncertainty whether a mortgage is regulated

4.4A.21 R (1) If at the point that initial disclosure must be made in accordance with MCOB 4.4A.1R, MCOB 4.4A.2R, MCOB 4.4A.4R and MCOB 4.4A.8R
a firm is uncertain whether the contract will be a regulated mortgage contract, the firm must:

(a) make the initial disclosure; or

(b) seek to obtain from the customer information that will enable the firm to ascertain whether the contract will be a regulated mortgage contract.

(2) Where (1)(b) applies, the initial disclosure must be made unless, on the basis of the information provided by the customer, the firm has reasonable evidence that the contract is not a regulated mortgage contract.

Appointed representatives

4.4A.22 R A firm may restrict the home finance transactions it authorises a particular appointed representative to sell. If it does so, the firm must ensure the appointed representative reflects this limited range in any disclosure given to the customer under MCOB 4.4A.

Record keeping

4.4A.23 G Firms are reminded of the general record-keeping requirements in SYSC 9. A firm should keep appropriate records of the disclosures required by this section.

Amend the following as shown.

4.5 Additional disclosure for distance mortgage mediation contracts, distance home purchase mediation contracts and distance regulated sale and rent back mediation contracts with retail customers

... 

4.5.2 R If the initial contact of a kind in MCOB 4.4.1R(1) initial contact is with a consumer with a view to concluding a distance mortgage mediation contract...

After MCOB 4.6 insert the following new section. The text is not underlined.

4.6A Rolling-up of fees or charges into loan

4.6A.1 R A mortgage lender may not offer a regulated mortgage contract to a customer on the basis that fees or charges of any kind (receivable either by the mortgage lender or another party) are automatically added to the sum advanced.
4.6A.2 R A firm must not undertake any action that commits a customer to an application for a regulated mortgage contract where a fee or charge of any kind (receivable either by the firm or another party) is to be added to the sum advanced under the regulated mortgage contract, unless the customer has made a positive choice to add the fee or charge to the sum advanced.

MCOB 4.7 is deleted in its entirety and replaced with a new section MCOB 4.7A. The deleted text is not shown and the new text is not underlined.

4.7A Advised sales

4.7A.1 G (1) MCOB 4.7A sets out standards to be observed by firms when advising a particular customer on regulated mortgage contracts.

(2) The rules at MCOB 4.8A require firms which are selling regulated mortgage contracts to, or entering into variations of existing regulated mortgage contracts with, certain types of vulnerable customer, to provide advice to them.

(3) The rules at MCOB 4.8A also provide that advice must be given wherever the sales process involves spoken or other interactive dialogue (except for high net worth mortgage customers, professional customers and loans solely for a business purpose). They do not prohibit the giving of pre-contract or preliminary information which does not amount to advice to the particular customer, but means that advice must be given before a firm enters into or arranges a regulated mortgage contract, or variation of such contract, unless the requirements there are satisfied. Firms may wish to refer to PERG (particularly PERG 4.6) for guidance on the regulatory perimeter in relation to advising on home finance transactions.

(4) The rules at MCOB 4.8A provide for an exception which permits certain execution-only sales which do not involve additional borrowing.

Suitability

4.7A.2 R If a firm gives advice to a particular customer to enter into a regulated mortgage contract, or to vary an existing regulated mortgage contract, it must take reasonable steps to ensure that the regulated mortgage contract is, or after the variation will be, suitable for that customer.

4.7A.3 R In MCOB 4.7A, a reference to advice to enter into a regulated mortgage contract is to be read as including advice to vary an existing regulated mortgage contract.

4.7A.4 G (1) A firm should take reasonable steps to obtain from a customer all information likely to be relevant for the purposes of MCOB 4.7A.
(2) For the purposes of MCOB 4.7A.2R, if for any reason a customer rejects (in whole or in part) advice given by a firm, the firm is not precluded from advising him to enter into a different regulated mortgage contract (in accordance with the requirements of MCOB 4.7A) provided the firm has taken reasonable steps to ensure that that different contract is suitable for the customer.

4.7A.5 R For the purposes of MCOB 4.7A.2R:

(1) a regulated mortgage contract will not be suitable for a customer unless the regulated mortgage contract is appropriate to the needs and circumstances of the customer;

(2) a firm must base its determination of whether a regulated mortgage contract 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 a regulated mortgage contract if there is no regulated mortgage contract which is suitable from the product range offered by the firm; and

(4) if a mortgage lender is dealing with an existing customer with a payment shortfall and has concluded that there is no suitable replacement regulated mortgage contract, the firm must nonetheless have regard to MCOB 13.3.

4.7A.6 R When a firm assesses whether the regulated mortgage contract is appropriate to the needs and circumstances of the customer for the purposes of MCOB 4.7A.5R(1), the factors it must consider include the following, insofar as relevant:

(1) whether the customer’s requirements appear to be within the mortgage lender’s known eligibility criteria for the regulated mortgage contract;

(2) whether it is appropriate for the customer to have an interest-only mortgage, a repayment mortgage, or a combination of the two;

(3) whether it is appropriate for the customer to take out a regulated mortgage contract for a particular term;

(4) whether it is appropriate for the customer to have stability in the amount of required payments, especially having regard to the impact on the customer of significant interest rate changes in the future;

(5) whether it is appropriate for the customer to have their payments minimised at the outset;

(6) whether it is appropriate for the customer to make early
repayments;

(7) whether it is appropriate for the customer to have any other features of a regulated mortgage contract;

(8) whether the regulated mortgage contract is appropriate, based on the information provided by the customer as to his credit history; and

(9) whether it is appropriate for the customer to pay any fees or charges in relation to the regulated mortgage contract up front, rather than adding them to the sum advanced (see also MCOB 4.6A.2R).

4.7A.7 G Firms are reminded that the list in MCOB 4.7A.6R is not exhaustive. For certain customers there may be additional considerations to explore beyond those described in that rule; for example, in the case of a business loan or a regulated mortgage contract for a high net worth mortgage customer.

4.7A.8 G Examples of criteria in MCOB 4.7A.6R(1) are: the expected affordability criteria of the mortgage lender; and whether the mortgage lender will lend in respect of properties of a non-standard construction.

Interest-only

4.7A.9 R In relation to MCOB 4.7A.6R(2), where a firm has identified an interest-only mortgage as appropriate for a customer, the firm must ensure that the customer is aware that he will have to demonstrate to the mortgage lender that he will have in place a clearly understood and credible repayment strategy, in order for the mortgage lender to be able to satisfy MCOB 11.6.41R(1).

4.7A.10 G MCOB 4.7A.9R does not require a firm to advise the customer on a credible repayment strategy or assess the adequacy of a customer’s existing repayment strategy.

Bridging loans

4.7A.11 R When a firm assesses whether a bridging loan is appropriate to the needs and circumstances of the customer for the purposes of MCOB 4.7A.5R(1), the factors it must consider include, in addition to the factors listed at MCOB 4.7A.6R:

(1) whether it is appropriate for the customer to make regular payments; and

(2) whether it is appropriate for the customer to access finance quickly.

4.7A.12 R Where a firm has identified a bridging loan as appropriate for a customer, the firm must ensure that the customer is aware that he will have to demonstrate to the mortgage lender that he has a clearly understood and credible repayment strategy in place.
Where a firm is considering giving advice to a customer to enter into a bridging loan, the reasonable steps in MCOB 4.7A.2R include considering why it is not appropriate for the customer to take out a regulated mortgage contract which is not a bridging loan.

If a firm advises a customer to enter into a regulated mortgage contract with a term of a particular length so that MCOB 4.7A.11R to MCOB 4.7A.13R do not apply because the regulated mortgage contract does not fall within the definition of a bridging loan, that advice may be relied on as tending to show contravention of MCOB 2.5A.1R (The customer’s best interests).

Debt consolidation

When a firm advises a customer in relation to entering into a regulated mortgage contract where the main purpose for doing so is the consolidation of existing debts by the customer, in addition to the factors at MCOB 4.7A.6R, it must also take account of the following, where relevant, in assessing whether the regulated mortgage contract 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 appropriate for the customer to negotiate an arrangement with his creditors rather than to take out a regulated mortgage contract.

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 4.7A.15R does not apply may be relied on as tending to show contravention of MCOB 2.5A.1R (The customer’s best interests).

Further advances

Where the customer is looking to increase the borrowing secured on the property which is the subject of an existing regulated mortgage contract, unless the firm knows that the existing lender will not make a further advance to the customer, the firm must inform the customer, either orally or in writing, that it may be possible, and more appropriate, to do so rather than to enter into a regulated mortgage contract with another lender.

Firms are not 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
4.7A.19 R When advising a customer on the suitability of a regulated mortgage contract, a firm must explain to the customer that the assessment of whether the regulated mortgage contract is appropriate to his needs and circumstances is based only on the customer’s current circumstances and any reasonably foreseeable changes to those.

4.7A.20 G Different considerations apply when giving advice to 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 a regulated mortgage contract. In those cases, a firm may still be able to give advice to that customer where the regulated mortgage contract concerned is, in the circumstances, a more suitable one than the customer’s existing regulated mortgage contract.

4.7A.21 G In complying with MCOB 4.7A.5R(1) a firm is not required to consider whether it would be preferable for the customer to:

1. purchase a property by using his own resources, rather than by borrowing under a regulated mortgage contract; or
2. rent a property, rather than purchase one; or
3. delay entering into a regulated mortgage contract until a later date (on the grounds that property prices would have fallen in the intervening period, or that the interest rate in relation to the regulated mortgage contract may be lower, or both).

4.7A.22 G MCOB 4.7A.5R(3) means that where the advice is not provided on an unlimited range of products from across the relevant market, the assessment of suitability should not be limited to the types of regulated mortgage contracts which the firm offers. A firm cannot recommend the 'least worst' regulated mortgage contract where the firm does not have access to products appropriate to the customer’s needs and circumstances. This means, for example, that a firm dealing solely in the credit-impaired market should not recommend one of these regulated mortgage contracts if approached for advice by a customer who is not a credit-impaired customer.

4.7A.23 G A firm may generally rely on any information provided by the customer for the purposes of MCOB 4.7A.5R(1) unless, taking a common sense view of this information, it has reason to doubt it.

Rejected advice

4.7A.24 R If a customer has rejected the advice given by a firm and instead wishes to enter into a different regulated mortgage contract as an execution-only sale, the firm may enter into or arrange that contract as an execution-only sale provided the requirements in MCOB 4.8A.14R are satisfied.

Record keeping
4.7A.25 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, that it has obtained for the purposes of MCOB 4.7A;

(b) that explains why the firm has concluded that any advice given to a customer complies with MCOB 4.7A.2R and satisfies the suitability requirement in MCOB 4.7A.5(1)R; and

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

(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.

MCOB 4.8 is deleted in its entirety and replaced with a new section MCOB 4.8A. The deleted text is not shown and the new text is not underlined.

4.8A Execution-only sales

Scope and application of this section

4.8A.1 G This section sets out the conditions which must be satisfied for a firm to enter into or vary a regulated mortgage contract with a customer, or arrange such a transaction for a customer, without giving advice, or where the advice given by the firm has been rejected. As explained in MCOB 4.7A.1G, it does not prohibit the giving of pre-contract or preliminary information which does not amount to advice to the particular customer. If a firm intends (where permitted under this section) to operate a business model under which it will not give advice to particular customers, it may wish to refer to PERG (particularly PERG 4.6) for guidance on the regulatory perimeter in relation to the regulated activities which constitute advising on home finance transactions.

4.8A.2 G Subject to certain limited exceptions, where the rules in MCOB 4.8A apply to a firm they restrict execution-only sales (which term is defined to include variations of existing contracts) to cases where:

(1) there is no spoken or other interactive dialogue between the firm and the customer during the sale; or

(2) if there is spoken or other interactive dialogue between the firm and the customer during the sale:

(a) the customer is a high net worth mortgage customer; or
(b) the customer is a professional customer; or

(c) the loan is solely for a business purpose;

and in each case the customer has positively elected to proceed with an execution-only sale and (in the case of a professional customer) identified the product he wishes to purchase; or

(3) the customer has rejected advice, identified the product he wishes to purchase and positively elected to proceed with an execution-only sale.

In each case certain requirements must be satisfied.

4.8A.3 G Interactive dialogue includes SMS, mobile instant messaging, email and communication via social media sites; this list is not exhaustive. Where a sale is carried out entirely on the internet, a firm merely permitting the customer to input details about the matters specified in MCOB 4.8A.14R(1), (2) or (3) in order to select from the firm’s product range the regulated mortgage contract he wishes to purchase, or the variation he wishes to enter into, would not be engaging in interactive dialogue. Firms are reminded that, if this process steers the customer towards any one or more of the products offered by it, so as to constitute advice, the requirements of MCOB 4.7A will apply.

The customer’s best interests

4.8A.4 G Firms are reminded that MCOB 2.5A.1R (The customer’s best interests) applies in all cases, including in relation to execution-only sales.

4.8A.5 R A firm must not encourage a customer to opt out of receiving advice on regulated mortgage contracts from, or reject advice given by, it or any associate.

4.8A.6 G Firms are not prohibited from entering into or arranging execution-only sales for regulated mortgage contracts for customers to whom they have provided product information (where otherwise permitted under this section), but MCOB 2.5A.1R and MCOB 4.8A.5R (The customer’s best interests) mean the information they provide should not steer the customer to elect to enter into an execution-only sale.

Cases where execution-only sales are not permitted

4.8A.7 R A firm must not enter into or arrange an execution-only sale for a regulated mortgage contract if:

(1) the customer is intending to use it to exercise a statutory “right to buy” the customer’s home; or

(2) the main purpose of the customer’s entering into it is to raise funds for debt consolidation; or
(3) there is spoken or other interactive dialogue between the firm and the customer at any point during the sale.

4.8A.8 E An attempt by the firm either to:

(1) misdescribe the customer’s purpose or characteristics; or

(2) encourage the customer to tailor the amount he wishes to borrow;

so that MCOB 4.8A.7R does not apply may be relied on as tending to show contravention of MCOB 2.5A.1R (The customer’s best interests).

Exceptions: high net worth mortgage customers, professional customers and loans solely for a business purpose.

4.8A.9 R (1) MCOB 4.8A.7R does not apply where the customer is a high net worth mortgage customer.

(2) MCOB 4.8A.7R(3) does not apply where the customer is a professional customer or the loan is solely for a business purpose.

Exception: rate switches and other variations

4.8A.10 R (1) MCOB 4.8A.7R does not apply in the case of a variation of a regulated mortgage contract, provided that:

(a) the variation would not involve the customer taking on additional borrowing beyond the amount currently outstanding under the existing regulated mortgage contract, 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 only 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 regulated mortgage contract which would replace an existing regulated mortgage contract between the customer (or, where there are joint borrowers, at least one of them) and the firm (either as the original mortgage lender or as the transferee of the existing contract).

4.8A.11 G (1) The variation in MCOB 4.8A.10R might involve: a transfer to a different property ("porting"); the addition or removal of a borrower for joint mortgages; an extension of the term; a change in payment method; or consent to let the property. This list is not exhaustive.

(2) Examples of rate changes in MCOB 4.8A.10R(1)(b) 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*
4.8A.10R(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* 4.7A will
apply.

Exception: rejected advice

4.8A.12 R *MCOB* 4.8A.7R does not apply where the customer has rejected advice
given by a firm and instead wishes to enter into a different regulated
mortgage contract as an execution-only sale (see *MCOB* 4.8A.14R).

Execution-only sales: guidance

4.8A.13 G (1) If a firm wishes to be able to apply the exception in *MCOB* 4.8A.9R
for a high net worth mortgage customer, it should first consider the
provision in *MCOB* 1.2.9CR (Requirement for evidence before
treating a loan as being solely for business purposes, or a customer
as a high net worth mortgage customer or a professional customer).

(2) Where a firm’s business model is such that it does not offer advice
on regulated mortgage contracts to particular customers, it should
ensure that it does not enter into or arrange regulated mortgage
contracts for customers in breach of *MCOB* 4.8A.7R. Such a firm
may wish to use filtering questions which the customer is required
to answer before he is able to proceed, in order to establish whether
any of the exceptions to *MCOB* 4.8A.7R apply.

Requirements for execution-only sales

4.8A.14 R A firm must not enter into or arrange an execution-only sale for a
regulated mortgage contract unless, except as provided in *MCOB*
4.8A.15R:

(1) for a new regulated mortgage contract not falling within *MCOB*
4.8A.10R, the customer has identified the regulated mortgage
contract he wishes to purchase, specifying to the firm at least the
following information:

(a) the name of the mortgage lender;

(b) the rate of interest;

(c) the interest rate type (that is, whether fixed, variable or some
other type);

(d) the price or value of the property on which the regulated
mortgage contract would be secured (estimated where
necessary);

(e) the length of the term required by the customer;

(f) the sum the customer wishes to borrow; and

(g) whether the customer wants an interest-only mortgage or a repayment mortgage;

(2) for a contract variation not falling within MCOB 4.8A.10R (but permitted by MCOB 4.8A.7R), the customer has specified at least the following information, where applicable to the variation he wishes to enter into:

(a) the price or value of the property;

(b) the length of term required (or confirmation that this should remain unchanged); and

(c) the amount the customer wishes to borrow;

(3) for a contract variation falling within MCOB 4.8A.10R, the customer has specified the variation he wishes to enter into;

(4) the customer has been informed, clearly and prominently and in a durable medium (after providing the information in (1), (2), or (3), where that is required):

(a) in any case falling within MCOB 4A.7A.24 R (Rejected advice) where the firm has advised the customer that the regulated mortgage contract (or variation) is unsuitable for the customer, that that is the case; or

(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 regulated mortgage contract (or variation);

and in either case that the customer will not benefit from the protection of the rules (in MCOB 4.7A) on assessing suitability. In any case where there is spoken dialogue between the firm and the customer at any point during the sale, the firm must also provide this information orally; and

(5) once the customer has been provided with the information in (4), in any case where there is spoken or other interactive dialogue between the firm and the customer at any point during the sale, he 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 (4), which must be separate from any other information or contractual
documentation.

4.8A.15 R The requirements in MCOB 4.8A.14R(1) to (3) do not apply if the customer is a high net worth mortgage customer or entering into the regulated mortgage contract solely for a business purpose.

4.8A.16 G Where the information in MCOB 4.8A.14R(4) 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.

Managing execution-only sales

4.8A.17 R A firm which intends to transact execution-only sales in regulated mortgage contracts must have in place and operate in accordance with a clearly defined policy which:

(1) sets out the amount of business the firm reasonably expects to transact by way of execution-only sales and the steps to be taken by the firm if that business exceeds the expected levels; and

(2) sets out its processes and procedures for ensuring compliance with the rules in MCOB 4.8A; in particular:

(a) how it will ensure in every case that, before proceeding with an execution-only sale it has obtained (where required) a voluntary and informed positive election from the customer in order to comply with MCOB 4.8A.14R(5);

(b) how it will ensure in every case that it acts in compliance with MCOB 2.5A.1R and MCOB 4.8A.5R (The customer’s best interests), including not encouraging a customer to enter into a regulated mortgage contract (or variation) as an execution-only sale; and

(c) how it will identify whether a customer meets the definition of high net worth mortgage customer or professional customer, if it will offer execution-only sales to those customers; and

(3) includes the arrangements for monitoring and auditing compliance with the policy, processes and procedures.

Record keeping

4.8A.18 R (1) Whenever a firm enters into or arranges an execution-only sale for a regulated mortgage contract, it must make and maintain a record of:

(a) the information provided by the customer which satisfies MCOB 4.8A.14R(1), (2) or (3);
(b) the information in durable medium in MCOB 4.8A.14R(4);

(c) (where applicable) the confirmation by the customer in MCOB 4.8A.14R(5); 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 regulated mortgage contract was entered into or arranged (or the variation was entered into or arranged).

(3) A firm must keep an adequate and up-to-date record of the policy in MCOB 4.8A.17R, where such policy is required by that rule. When the policy is changed, a record of the previous policy must be retained for one year from the date of change.

Forbearance

4.8A.19 R MCOB 4.8A does 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.

Amend the following as shown.

4.9 Business loans and loans to high net worth mortgage customers: tailored provisions

4.9.1 R For the purposes of the rules in MCOB there is one market in regulated mortgage contracts for a business purpose. Within this market, a firm should describe its scope of service in accordance with MCOB 4.3.1R.

[deleted]

4.9.1A G Firms are reminded that in accordance with MCOB 1.2.3R and MCOB 1.2.3AR, they should either comply in full with MCOB, but in doing so may opt to take account of or comply with all tailored provisions in MCOB that relate to business loans or loans to high net worth mortgage customers, as the case may be. Therefore, a firm may only follow the tailored provisions in MCOB 4.9 in relation to one of these sectors if it also follows all other tailored provisions in MCOB that relate to that sector. In either case, the rest of MCOB applies in full.

4.9.2 G Where a personal recommendation or personalised information is provided in connection with a regulated mortgage contract for a business purpose it is recognised that there may be additional considerations beyond those described in MCOB 4.7.11E as part of the assessment of whether the regulated mortgage contract is appropriate to the needs and circumstances
Initial disclosure

4.9.3 G As explained in MCOB 4.4.3G(1) the requirement to provide an initial disclosure document is only triggered where the firm has identified the possibility that it will be giving personalised information or advice to a customer on a regulated mortgage contract for a business purpose.

4.9.4 G  (1) Firms are reminded that MCOB 1.2.7R enables them to substitute an alternative for 'mortgage' in the initial disclosure document in relation to a regulated mortgage contract for a business purpose or a high net worth mortgage customer (except in relation to sections 6 and 8 of any initial disclosure document or sections 5 and 8 of any combined initial disclosure document).

(2) MCOB 1.2.7R also means that a firm must amend any combined initial disclosure document in relation to a regulated mortgage contract for a business purpose or a high net worth mortgage customer so that the final sentence of prescribed text in section 4 states: 'You will receive an illustration which will tell you about any fees relating to a particular [term used by the firm to describe the borrowing, for example "mortgage secured overdraft"]'.

(3) Where the initial disclosure document in relation to a regulated mortgage contract for a business purpose or a high net worth mortgage customer makes reference to the permitted business of a firm (for example, sections 6, 5 and 8 of the initial disclosure document combined initial disclosure document may refer to a firm advising on or arranging regulated mortgage contracts) a firm can add text explaining the relevance of these descriptions. One approach may be to add an additional sentence such as: 'Secured overdrafts are referred to here as "mortgages" because they involve a charge being taken over your property'.

Non-advised sales

4.9.5 R MCOB 4.8.1R does not apply in relation to a regulated mortgage contract for a business purpose.

…

4.10 Home purchase plans: sales standards

Scope of service provided

4.10.1 R A firm must comply with the scope of service requirements at MCOB 4.3.1R and MCOB 4.3.2R (Providing services within and beyond scope), MCOB 4.3.4A R and 4.3.4AR (Whole of market and MCOB 4.3.10R (Appointed representatives).
4.10.2 R (1) A firm must, on first making contact with a customer when it anticipates giving personalised information or advice on entering into a new home purchase plan, ensure that the customer is, or has been, provided with an appropriate initial disclosure document or combined initial disclosure document in a durable medium.

(2) If the initial contact in (1) is by telephone, a firm must:

(a) (if the call is with a view to concluding a distance home purchase mediation contract) give the following information before proceeding further:

(i) the name of the firm and (if initiated by the firm) the commercial purpose of the call;

(ii) the scope of the service provided by the firm; and

(iii) whether or not the firm will provide the customer with advice on those home purchase plans within its scope; and

(b) Ensure that the customer is, or has been, provided with such a document in a durable medium as soon as is practicable.

(3) A firm must not use a combined initial disclosure document in relation to a combination of home purchase plans and equity release transactions. [deleted]

4.10.3 G In accordance with Principle 7, where a firm is likely to provide services in relation to both regulated mortgage contracts and home purchase plans, it should provide a combined initial disclosure document rather than two separate initial disclosure documents. [deleted]

4.10.3A R A firm must comply with the rules in MCOB 4.4A as if the references in those rules to regulated mortgage contracts and mortgage lenders were to, respectively, home purchase plans and home purchase providers.

4.10.3B R For the purposes of MCOB 4.4A.2R(1) there is one relevant market for home purchase plans.

4.10.4 G The guidance on initial disclosure requirements at MCOB 4.4.2G to MCOB 4.4.4G in MCOB 4.4A may be relevant; in this context, that guidance should be read using home purchase plan terminology instead of the equivalent regulated mortgage contract terminology, where appropriate.

Additional requirements for distance home purchase mediation contracts with retail customers

[Note: The rules regarding additional disclosure requirements for, and
cancellation of, distance home purchase mediation contracts are set out in MCOB 4.5 and MCOB 4.6 respectively.]

Advised sales: suitability

4.10.5 G In accordance with Principle 9, a firm should take reasonable steps to obtain from a customer all information likely to be relevant to ensuring the suitability of its advice. [deleted]

4.10.5A R If a firm gives advice to a particular customer to enter into a home purchase plan, or to vary an existing home purchase plan, it must take reasonable steps to ensure that the home purchase plan is, or after the variation will be, suitable for that customer.

4.10.5B R In MCOB 4.10, a reference to advice to enter into a home purchase plan is to be read as including advice to vary an existing home purchase plan.

4.10.5C G A firm should take reasonable steps to obtain from a customer all information likely to be relevant for the purposes of MCOB 4.10.5AR to MCOB 4.10.9AR.

4.10.5D R For the purposes of MCOB 4.10.5AR:

1. a home purchase plan will not be suitable for a customer unless the home purchase plan is appropriate to the needs and circumstances of the customer;

2. a firm must base its determination of whether a home purchase plan 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 a home purchase plan if there is no home purchase plan which is suitable from the product range offered by the firm;

4. if a home purchase provider is dealing with an existing customer in arrears, with a payment shortfall or otherwise in breach of their home purchase plan and has concluded that there is no suitable replacement home purchase plan, the firm must nonetheless have regard to MCOB 13.3; and

5. the reasonable steps in that rule include considering why it is not appropriate for the customer to take out a regulated mortgage contract.

4.10.6 R A firm, before making a personal recommendation on a home purchase plan, must take reasonable steps to ensure that it is:

1. affordable;
4.10.6A G MCOB 4.10.5DR(3) has the effect that a firm cannot recommend the 'least worst' home purchase plan where the firm does not have access to home purchase plan products appropriate to the customer's needs and circumstances.

4.10.7 G The guidance on suitability at MCOB 4.7.8G to MCOB 4.7.10G and MCOB 4.7.16G may be relevant. Firms may wish to consider the following provisions:

(1) the rule at MCOB 4.7A.6R on the customer’s needs and circumstances, as if it were guidance and to the extent applicable to home purchase plans; and

(2) the guidance at MCOB 4.7A.1G(2), MCOB 4.7A.21G and MCOB 4.7A.23G (Other considerations when advising);

in each case using home purchase plan terminology instead of the equivalent regulated mortgage contract terminology, where appropriate.

Non-advised sales

4.10.8 R If a firm arranges a home purchase plan or a variation to an existing home purchase plan without giving a personal recommendation, it must ensure that the questions it asks about the customer’s needs and circumstances are scripted in advance. [deleted]

4.10.9 G The guidance on non-advised sales at MCOB 4.8.2G and on scripted questions at MCOB 4.8.5G and MCOB 4.8.6G may be relevant. [deleted]

Rejected recommendations

4.10.9A R If a customer has rejected the advice given by a firm and instead requested an execution-only sale of a home purchase plan, the firm may enter into or arrange that execution-only sale provided the requirements in MCOB 4.8A.14R (as applied in relation to home purchase plans by MCOB 4.10.9BR and modified for home purchase plans by MCOB 4.10.9DR) are satisfied.

Execution-only sales

4.10.9B R MCOB 4.8A applies to a firm as if the references in that section to regulated mortgage contracts and mortgage lenders were to, respectively, home purchase plans and home purchase providers, but MCOB 4.8A.14R(1) and (2) are modified in relation to home purchase plans as set out in MCOB 4.10.9DR.
As provided in MCOB 4.1.2BR, MCOB 4.8A only applies to home purchase providers in relation to entering into home purchase plans where there is no firm which is arranging the transaction and to which MCOB 4.8A applies.

For home purchase plans, the following items of information replace those set out in MCOB 4.8A.14R(1) and (2):

1. the name of the home purchase provider;
2. the length of the term required by the customer; and
3. the sum required from the home purchase provider.

Risks and features statement and tariff of charges

A firm must, before making a personal recommendation to advising a customer of, or when a customer requests or selects, to enter into, or entering into or arranging a home purchase plan as an execution-only sale, ensure that the customer is, or has been, provided with an appropriate risks and features statement about that plan.

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 that it has obtained for the purposes of MCOB 4.10.5DR;

(b) that explains why the firm has concluded that any advice given to a customer complies with MCOB 4.10.5AR and satisfies the suitability requirement in MCOB 4.10.5DR(1); and

(c) of any advice which the customer has rejected, including the reasons why it was rejected and details of the home purchase plan which the customer has proceeded with as an execution-only sale.

(2) The records in (1) must be retained for a minimum of three years from the date on which the advice was given.

Firms should note the record-keeping requirements in MCOB 4.8A in relation to execution-only sales which are imposed in relation to home purchase plans by MCOB 4.10.9BR.

Sale and rent back: advising and selling standards
Initial disclosure requirements

4.11.1 R (1) A regulated sale and rent back firm, on first making contact with a potential SRB agreement seller for whom it might reasonably be expected to carry on any regulated sale and rent back activity, must make the following disclosures to him a customer, both orally and in writing, during the initial contact:

…

Affordability and appropriateness Advised sales

4.11.3 R A regulated sale and rent back firm must not permit a potential SRB agreement seller to become contractually committed to enter into a regulated sale and rent back agreement unless it has reasonable grounds to be satisfied that: a firm with permission to advise on regulated sale and rent back agreements has advised the particular customer to enter into it.

(1) the customer can afford the payments he will be liable to make under the agreement; and

(2) the proposed regulated sale and rent back agreement is appropriate to the needs, objectives and circumstances of the customer.

Suitability

4.11.3A R A firm must take reasonable steps to ensure that it does not advise a particular customer to enter into a regulated sale and rent back agreement unless the regulated sale and rent back agreement is suitable for that customer.

4.11.3B G A firm should take reasonable steps to obtain from a customer all information likely to be relevant for the purposes of MCOB 4.11.3AR.

4.11.3C R For the purposes of MCOB 4.11.3AR:

(1) a regulated sale and rent back agreement will not be suitable unless, having regard to the facts disclosed by the customer and other relevant facts about the customer of which the firm is or should reasonably be aware, the firm concludes on reasonable grounds that:

(a) the customer can afford the payments he will be liable to make under it; and

(b) the proposed regulated sale and rent back agreement is appropriate to the needs and circumstances of the customer;

(2) a firm must base its determination of whether a customer can afford the payments he will be liable to make under a regulated sale and rent back agreement, and whether it is appropriate to his 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 a *regulated sale and rent back agreement* if there is no *regulated sale and rent back agreement* which is suitable from within the product range offered by the *firm*.

4.11.4 E

(1) In assessing whether a *customer* can afford to enter into a particular *regulated sale and rent back agreement*, a *firm* should use the following information:

(a) the rental payments that will be due under the tenancy agreement which confers the right of the *customer* (or trust beneficiary or related party) to continue residing in the property, stress tested to take account of possible future rental increases during the fixed term of the tenancy agreement by reference to the circumstances in which the agreement permits increases or changes to the initial rent;

(b) adequate information, obtained from the *customer* to establish his *average* income and expenditure calculated on a monthly basis, and any other resources that he has available, and verified by the firm using evidence provided by the *customer*;

(c) the *customer’s* net disposable income, which a *firm* should establish using the information referred to in (b);

(d) the *customer’s* entitlement to means-tested benefits and housing benefits; and

(e) the effect of any likely future change to the *customer’s* income, expenditure or resources during the period of the *regulated sale and rent back agreement*.

(2) The *firm* should explain to the *customer* that it will base its assessment on whether he can afford to enter into the particular *regulated sale and rent back agreement* on the information he provides to the *firm* about his income, expenditure and resources.

(3) In assessing affordability under (1) the *firm*:

(a) must not rely to a material extent on the capital of, or income from, any lump sum the *customer* receives which represents the net sale proceeds of the property; and

(b) must disregard any discount or any future sum that may be payable to the *customer* under the terms of the *regulated sale and rent back agreement*.

(4) Contravention of (1), (2) or (3) may be relied upon as tending to show
contravention of MCOB 4.11.3C R(1)(a).

4.11.4A R  In assessing whether the regulated sale and rent back agreement is appropriate to the needs and circumstances of the customer for the purposes of MCOB 4.11.3C R(1)(b), as a minimum requirement a firm must consider the following list of factors:

(1) whether it is appropriate for the customer to sell his property for a price less than its value (as determined by the valuation which is required by MCOB 6.9.2R, including where applicable a valuation obtained by the SRB agreement seller as described in MCOB 6.9.2R(4)) (where this is proposed under the regulated sale and rent back agreement);

(2) whether it is appropriate for the customer because he is in financial difficulty;

(3) whether all other options have been explored and eliminated, including the customer speaking to his home finance provider and other creditors, getting debt advice, releasing the equity by other means and checking whether he is eligible for government or local authority help;

(4) whether it would be more appropriate for the customer to sell his home on the open market;

(5) whether the benefits to the customer in entering into the proposed regulated sale and rent back agreement outweigh any adverse effects it may have for him, including on his entitlement to means-tested benefits and housing benefits;

(6) the feasibility of the customer raising funds by alternative methods other than by a sale of his property; and

(7) if the customer is not under threat of repossession, why it is appropriate for the customer to take out a regulated sale and rent back agreement rather than to use an alternative method of finance.

4.11.4B E  The following may be relied on as tending to show contravention of MCOB 2.5A.1R (The customer’s best interests):

(1) an attempt by the firm to misdescribe the customer’s reasons for considering a regulated sale and rent back agreement; or

(2) an attempt to encourage a customer to enter into a regulated sale and rent back agreement involving a sale price for his property which is less than its value (as determined by the valuation which is required by MCOB 6.9.2R, including where applicable a valuation obtained by the SRB agreement seller as described in MCOB 6.9.2R(4)) if he is not under threat of repossession.
4.11.4C G  Firms are reminded that the list in MCOB 4.11.4AR is not exhaustive. For certain customers there may be additional considerations to explore beyond those described in that rule.

4.11.5 E  (1) In assessing whether a particular regulated sale and rent back agreement is appropriate to the needs, objectives and circumstances of a potential SRB agreement seller, a firm should have due regard to the following:

(a) whether the benefits to the customer in entering into the proposed regulated sale and rent back agreement outweigh any adverse effects it may have for him, including on his entitlement to means tested benefits and housing benefits; and

(b) the feasibility of the customer raising funds by alternative methods other than by a sale of his property.

(2) Contravention of (1) may be relied upon as tending to show contravention of MCOB 4.11.3R(2). [deleted]

4.11.7 G  …

4.11.7 G  …

(2) The firm should consider whether a customer in arrears with a payment shortfall under his regulated mortgage contract or home purchase plan has contacted his mortgage lender or home purchase provider to discuss possible forbearance options that may be available. Other possible alternative methods of raising funds will include the availability of local authority or other government rescue schemes that may apply in the customer’s circumstances.

…

Record keeping

4.11.8 R  (1) A firm must make and retain a record of the customer information that has been provided to it, including that relating to:

(a) the customer’s income, expenditure and other resources that it has obtained from him for the purpose of assessing affordability, together with the stress testing of the rental payments;

(b) the customer’s needs and individual circumstances that it has obtained from him for the purpose of assessing appropriateness; and

(c) the customer’s entitlement to means-tested benefits and housing benefits, including any evidence provided by the customer, that
it has obtained from him for the affordability and appropriateness assessment;

and which explains why the firm concluded that the regulated sale and rent back agreement was suitable for the customer could afford, and why it was appropriate for him, and why it advised him to enter into the proposed regulated sale and rent back agreement.

(2) The record in (1) must be retained for a minimum of five years from the date on which the assessment of affordability and appropriateness suitability was made, or one year after the end of the fixed term of the tenancy agreement under the regulated sale and rent back agreement, if later.

Reliance on another firm

4.11.9 R A firm need not comply with the requirements imposed on a regulated sale and rent back firm in this section to the extent that it is satisfied on reasonable grounds that another firm, with the appropriate permission to do so, has already done so.

4.11.10 G The effect of MCOB 4.11.9R is that a SRB agreement provider is expected to carry out its own assessments of affordability and appropriateness advise in relation to a particular regulated sale and rent back agreement, unless it is reasonable for it to rely on another firm with permission to advise on regulated sale and rent back agreements, to have done so in relation to a particular transaction.

The following Annex is deleted in its entirety. The deleted text is not struck through.

4 Annex 1R Initial disclosure document [deleted]

Amend the following as shown.

5.1 Application

... What?

5.1.3 R (1) This chapter applies if a firm:

(a) makes a personal recommendation to advises a particular customer to enter into, or arranges an execution-only sale in, a home finance transaction; or

(b) provides information to a customer that is specific to the
amount to be provided on a particular home finance transaction, including information provided in response to a request from a customer; or

(c) provides the means for a customer to make an application to it;

in connection with entering into, or agreeing to enter into, a home finance transaction provided by a home finance provider, other than an equity release transaction or a variation to an existing home finance transaction.

...

5.2 Purpose

5.2.1 (2) The purpose of MCOB 5 is to ensure that, before a customer submits an application for a particular home finance transaction, he is supplied with information that makes clear:

(a) (in relation to a regulated mortgage contract) its features, any linked deposits, any linked borrowing and any tied products; and

(b) the price that the customer will be required to pay under that home finance transaction, to enable the customer to assess whether it is affordable to him make a well-informed purchasing decision.

...

5.4 Mortgage illustrations: Information on regulated mortgage contracts: general

...

Restriction on provision Provision of information

5.4.13 R A firm must not provide a customer with information that is specific to the amount that the customer wants to borrow on a particular regulated mortgage contract except in the following circumstances:

(1) when it is in the form of an illustration;

(2) when it is provided on screen, for example a computer screen;

(3) when supplementary information which is not contained within an illustration is provided after or at the same time as an illustration; or

(4) when it is provided orally, for example by telephone. [deleted]
When providing information on regulated mortgage contracts, firms should bear in mind that the information must be clear, fair and not misleading in accordance with Principle 7 and MCOB 2.2.6R; and must be given in accordance with MCOB 2.5A.1R (The customer’s best interests).

Where MCOB 5.4.13R(2) applies:

1. If the customer initiates the accessing of quotation information on screen (for example, by using the internet or interactive television), the following warning must be displayed prominently on each page on screen: 'This information does not contain all of the details you need to choose a mortgage. Make sure that you read the separate key facts illustration before you make a decision.'; and

2. A firm must not provide a customised print function where the information on the screen would not be in the form of an illustration if the information were printed in hard copy. [deleted]

Where MCOB 5.4.13R(3) applies, supplementary information must only be provided when it does not significantly duplicate information provided in the illustration. [deleted]

MCOB 5.4.13R 5 places no restrictions on the provision of information that is not specific to the amount the customer wants to borrow, for example, marketing literature including generic mortgage repayment tables or graphs illustrating the benefits of making a regular overpayment on a flexible mortgage. Such literature may, however, constitute a financial promotion and be subject to the provisions of MCOB 3 (Financial promotion).

Where MCOB 5.4.13R(2) and MCOB 5.4.13R(4) apply, firms should encourage the customer to obtain a copy of an illustration in a durable medium. This could be done, for example, if the information was contained on the firm’s website, by a prompt which asked the customer whether he wished to print off an illustration. [deleted]

Unless (2) applies, where MCOB 5.4.13R(2) or MCOB 5.4.13R(4) apply, a firm must provide the means for the customer to obtain an illustration as soon as practicable, through a delivery channel acceptable to the customer.

A firm does not need to provide an illustration if the customer refuses to disclose key information (for example, in a telephone conversation, his name or a communication address) or where the provision of an illustration is not appropriate, for example, because on the basis of discussions undertaken the customer is ineligible given the mortgage lender’s lending criteria, or is not interested in pursuing the enquiry. [deleted]

Messages to be given when providing information on regulated mortgage contracts...
5.4.18A R (1) Whenever a firm provides a customer with information specific to the amount that the customer wants to borrow on a particular regulated mortgage contract following an assessment of the customer’s needs and circumstances in order to comply with MCOB 4.7A.2R, it must give, clearly and prominently, the following information:

(a) the same information on the firm’s product range as is required by MCOB 4.4A.1R(1), MCOB 4.4A.2R and MCOB 4.4A.4R(1); and

(b) that the customer has the right to request an illustration for any regulated mortgage contract which the firm is able to offer the customer.

(2) A firm need not give the information in (1) if it has previously given that information in compliance with this rule within the last ten business days.

Message to be given when customer requests an execution-only sale

5.4.18B R (1) Whenever, as part of an execution-only sale (or potential execution-only sale), a customer provides a firm with the information in MCOB 4.8A.14R(1), (2) or (3) the firm must inform the customer, clearly and prominently, that the customer has the right to request an illustration for any regulated mortgage contract which the firm is able to offer the customer.

(2) Whenever, as part of an execution-only sale (or potential execution-only sale), a high net worth mortgage customer or customer who would be entering into a regulated mortgage contract solely for a business purpose is provided with information specific to the amount that the customer wants to borrow on a particular regulated mortgage contract, the firm must inform the customer, clearly and prominently, that the customer has the right to request an illustration for any regulated mortgage contract which the firm is able to offer the customer.

(3) A firm need not give the information in (1) and (2) if it has previously given that information in compliance with this rule within the last ten business days.

Guidance relevant to messages given to customer

5.4.18C G (1) In order to demonstrate compliance with MCOB 5.4.18AR(1), a firm may wish to consider, for example, doing one or more of the following: give the messages to the customer in a durable medium; build the requirements into the firm’s training of staff, as evidenced by its training and compliance manuals; insert appropriate prompts into paper-based or automated sales systems; have procedures in place to monitor compliance by its staff with that rule. What is required in
each case will depend on all the circumstances.

(2) The reference in the template illustration at MCOB 5 Annex 1R to the possibility of obtaining other illustrations is not sufficient to comply with the obligations in MCOB 5.4.18AR(1)(b) and MCOB 5.4.18BR. A firm may, however, satisfy those obligations in a number of ways: for example, by drawing the customer’s attention to the right to request an illustration orally in a face-to-face meeting, or by referring to it in a letter or electronic communication or other written information.

... Tied products ...

5.4.24 G The rules on the content of an illustration at MCOB 5.6 (Content of illustrations) mean that if the regulated mortgage contract requires the customer to take out a tied product, the illustration must include an accurate quotation or a reasonable estimate of the payments the customer would need to make for the tied product (see MCOB 5.6.52R(2) on where the tied product is a repayment vehicle strategy that is a tied product and MCOB 5.6.74R on insurance that is a where the tied product is insurance) ...

... 5.5 Provision of illustrations Timing 

5.5.1 R (1) A firm must provide the customer with an illustration for a regulated mortgage contract before the customer submits an application for that particular regulated mortgage contract to a mortgage lender, unless an illustration for that particular regulated mortgage contract has already been provided.

(2) A Except in the circumstances in MCOB 5.5.1AR, a firm must provide the customer with an illustration for a regulated mortgage contract when any of the following occurs, unless an illustration for that regulated mortgage contract has already been provided:

(a) the firm makes a personal recommendation to advises the particular customer in relation to enter into one or more that regulated mortgage contracts, in which case an illustration must be provided at the point the recommendation advice is made given (and illustrations for all recommended regulated mortgage contracts must be provided), unless the advice is given by telephone, in which case the firm must provide an illustration within 5 business days; or
(b) the firm provides written information that is specific to the amount that the customer wants to borrow on a particular regulated mortgage contract; or [deleted]

(c) the customer requests written information from the firm that is specific to the amount that the customer wants to borrow on a particular regulated mortgage contract, unless the firm does not wish to do business with the customer. [deleted]

(d) the customer requests an illustration for that regulated mortgage contract, unless the firm is aware that it is unable to offer that regulated mortgage contract to him; or

(e) as part of an execution-only sale (or potential execution-only sale) the customer has provided the firm with the information in MCOB 4.8A.14R(1) to (3) to indicate which regulated mortgage contract or variation he wishes to enter into; or

(f) as part of an execution-only sale (or potential execution-only sale), a high net worth mortgage customer or a customer who is entering into the regulated mortgage contract solely for a business purpose, has indicated his intention to submit an application for that regulated mortgage contract.

(3) Subject to MCOB 5.5.4R, the firm may comply with (1) and (2) by providing an offer document containing an illustration, if this can be done as quickly as providing an illustration.

5.5.1A  R A firm need not provide an illustration:

(1) in relation to a direct deal;

(2) if the customer refuses to disclose key information (for example, in a telephone conversation, his name or a communication address) or where the customer is not interested in pursuing the enquiry; or

(3) if the firm does not wish to do business with the customer.

5.5.1B  R If the firm chooses not to give an illustration in the circumstances set out in MCOB 5.5.1AR(1), where it has given advice on a direct deal, the firm must give the customer a written record of the advice.

5.5.1C  R If, notwithstanding MCOB 5.5.1AR(1), a firm chooses to give an illustration in relation to a direct deal, it need not comply with MCOB 5.4.2R or MCOB 5.4.3R (Accuracy).

5.5.1D  G In the circumstances in MCOB 5.5.1CR, a firm remains subject to MCOB 5.4.1R (Clear, fair and not misleading).

5.5.1E  G In the circumstances in MCOB 5.5.1AR(2), the rule in MCOB 5.5.1R(1) will mean that the customer may not make an application for a regulated
mortgage contract as an illustration has not been provided.

... 

5.5.4 R A firm must not accept fees, commission a valuation, or undertake any other action that commits the customer to an application (including accepting product-related fees in relation to the regulated mortgage contract concerned) until the customer has had the opportunity to consider an illustration.

... 

5.5.6 G Subject to MCOB 5.5.1R and MCOB 5.5.15R, when an illustration is requested without delay, a firm may perform an internal credit score and obtain information on the customer’s credit record from a credit reference agency (subject to the consent of the customer), in order to provide a customer with an approval in principle for a regulated mortgage contract, without having to provide an illustration. [deleted]

... 

No preference between repayment and interest-only

5.5.13 R If the customer expresses no preference between a repayment mortgage and an interest-only mortgage, the firm must:

(1) provide an illustration for a repayment mortgage (except where the firm does not provide repayment mortgages, in which case it must provide only an illustration for an interest-only mortgage); and

(2) make the customer aware that it has provided the illustration on this basis. [deleted]

Providing an illustration without delay in response to a customer request

5.5.14 G Where the customer requests written information from the firm that is specific to the amount that the customer wants to borrow on an illustration for a particular regulated mortgage contract under (see MCOB 5.5.1R(2)(c)(d)), the purpose of MCOB 5.5.15R, MCOB 5.5.16R and MCOB 5.5.17G is to ensure that the customer receives an illustration without unnecessary delay. These requirements do not restrict the information that the firm may obtain from the customer after it has provided the customer with an illustration.

5.5.15 R In meeting a request for an illustration under in accordance with MCOB 5.5.1R(2)(e)(d), the firm must not delay the provision of the illustration by requesting information other than:

... 

(7) any of the following information where it affects the availability of the regulated mortgage contract that the customer has requested information on or affects the information to be included in the illustration:
(c) whether the customer needs to self-certify his income; [deleted]

5.6 Content of illustrations

Content: required information

5.6.6 R As a minimum the illustration must be personalised to reflect the following requirements of the customer:

(4) the term of the regulated mortgage contract (where the customer is unable to suggest a date at which he expects to repay the loan, for example in the case of an open-ended secured bridging loan bridging loan, secured overdraft or mortgage credit card, then a term of 12 months must be assumed and this assumption stated); and

Section 5: “Overall cost of this mortgage”

5.6.31 R Under the section heading 'Overall cost of this mortgage' where the regulated mortgage contract has an agreed term for repayment and a regular payment plan (that is, it is not a revolving credit agreement such as a secured overdraft or mortgage credit card, or a regulated mortgage contract where all of the interest rolls up, such as an open-ended bridging loan bridging loan):

5.6.32 R Under the section heading 'Overall cost of this mortgage' where the regulated mortgage contract has no agreed term for repayment, (and a 12 month term has been assumed), or no regular payment plan, or both (for example, a revolving credit agreement such as a secured overdraft or mortgage credit card or a regulated mortgage contract where all the interest rolls up such as an open-ended bridging loan bridging loan):

(2) where all the interest on the regulated mortgage contract rolls up and is repaid as a lump sum at the end of the regulated mortgage contract, for example a secured bridging loan bridging loan, then the following text must follow the text in (1): 'It assumes that you pay back the total amount owing as a lump sum at the end of the mortgage term.';
Section 6: ‘What you will need to pay each [insert frequency of payments from MCOB 5.6.40R]’

5.6.39 R MCOB 5.6.40R to MCOB 5.6.57G do not apply to loans without a term or regular payment plan where some or all of the interest rolls up, for example secured bridging loans, bridging loans, secured overdrafts or mortgage credit cards. In these cases, MCOB 5.6.134R to MCOB 5.6.138G apply.

5.6.52 R Where all or part of the regulated mortgage contract to which the illustration relates is an interest-only mortgage:

(2) if the regulated mortgage contract requires the customer to take out a repayment vehicle that is a tied product as a repayment strategy either through the mortgage lender or mortgage intermediary then:

(b) include an accurate quotation or a reasonable estimate of the payments the customer will need to make for the repayment vehicle that tied product; and

(3) if the illustration includes a quotation for the payments that would need to be made into the repayment vehicle by the customer for the repayment strategy:

(b) the illustration must provide a brief description only of the type of repayment vehicle strategy illustrated (full details of the repayment vehicle strategy may be provided separately);

(4) if a quotation for the repayment vehicle strategy is not provided in the illustration, the illustration must include a '?' sign in the column for payments alongside the following text…

(5) unless MCOB 5.6.55R applies, if a quotation for the repayment vehicle strategy has been included in the illustration, Section 6 must be extended to illustrate the monthly cost inclusive of the savings plan and must have the sub-heading ‘What you will need to pay each [insert frequency of payments from MCOB 5.6.40R] including the cost of a savings plan to
repay the capital' and must include:

...

(b) the sum of what the customer would need to pay in each instalment for the regulated mortgage contract and for the repayment vehicle strategy in the payments column. For example if payments are made monthly, this would be the amount that the customer would need to pay each month for the regulated mortgage contract and the repayment vehicle strategy...

...

Multi-part mortgages

...

5.6.56 R Where MCOB 5.6.55R applies and part of the regulated mortgage contract is an interest-only mortgage:

(1) if a quotation for the repayment vehicle strategy has been included in the illustration in accordance with MCOB 5.6.52R(3) then MCOB 5.6.52R(5) does not apply.

...

...

Section 7: ‘Are you comfortable with the risks’?

5.6.58 R MCOB 5.6.59R to MCOB 5.6.65R do not apply to loans without a term or regular repayment plan where some or all of the interest rolls up, for example, secured bridging loans, bridging loans, secured overdrafts or mortgage credit cards. In these cases MCOB 5.6.140R to MCOB 5.6.145R apply.

5.6.59 R Under the section heading 'Are you comfortable with the risks’?

(1) under the sub-heading 'What if interest rates go up?' the illustration must include the following:

...

(e)

...

(ii) where a repayment vehicle strategy has been included in the illustration in accordance with MCOB 5.6.52R(3), the payments quoted in (i) must include the cost of the repayment vehicle strategy and state that this is the case;
Alternative requirements for loans without a term or a regular repayment plan

Section 6: “What you will need to pay each [insert frequency of payments from MCOB 5.6.40R]”

5.6.133 R MCOB 5.6.134R to MCOB 5.6.138G apply only to loans without a term or regular payment plan where some or all of the interest rolls up, for example secured bridging loans bridging loans, secured overdrafts or mortgage credit cards.

5.6.134 R The heading for Section 6 of the illustration and the heading of the column on the right-hand side of this section must state the frequency with which payments must be made by the customer. (For example, if payments were to be made on a monthly basis, the heading for this section would be 'What you will need to pay each month' and the column would be headed 'Monthly payments'). Where no regular payments are required on the regulated mortgage contract, for example where all interest is rolled-up on a secured bridging loan bridging loan, then this section must be retained and the frequency of payments assumed must be 'monthly'.

5.6.135 R All the payments in Section 6 of the illustration must be calculated based on the frequency used for the purposes of the headings in MCOB 5.6.40R and must be shown in the column on the right-hand side of this section. If no payments are required, for example on a secured bridging loan bridging loan or secured overdraft, then this column should be marked on the illustration as nil.

5.6.136 R Section 6 of the illustration must contain the following information:

(3) where no payments are required (or no payments are allowed), for example a secured bridging loan bridging loan or secured overdraft, then section 6 of the illustration should state if no payments are required or no payments can be made; or

Section 7: “Are you comfortable with the risks?”

5.6.139 R MCOB 5.6.140R to MCOB 5.6.145R apply only to loans without a term or regular payment plan where some or all of the interest rolls up, for example secured bridging loans bridging loans, secured overdrafts or mortgage credit cards.

5.7 Business loans and loans to high net worth mortgage customers: tailored provisions

5.7.1 R Where the regulated mortgage contract is for a business purpose or a high net
worth mortgage customer, a firm may choose to provide a business illustration or high net worth illustration (as applicable) (in compliance with MCOB 5.7.2R) instead of complying with MCOB 5.6.

5.7.1A G Firms are reminded that, in accordance with MCOB 1.2.3R, they should either comply in full with MCOB, but in doing so may opt to take account of or comply with all tailored provisions in MCOB that relate to business loans or loans to high net worth mortgage customers. Therefore, a firm may only follow the tailored provisions in MCOB 5.7 in relation to one of these sectors if it also follows all other tailored provisions in MCOB if it also follows all other tailored provisions in MCOB that relate to that sector. In either case, the rest of MCOB applies in full.

5.7.2 R A business illustration or high net worth illustration provided to a customer must:

...  

(4) use font sizes and typefaces consistently throughout the business illustration or high net worth illustration which are sufficiently legible so that the business illustration or high net worth illustration can be easily read by a typical customer;

...

5.7.3 G ...  

(3) A firm may also choose to include other information beyond that required by MCOB 5.6. However, when adding additional material a firm should have regard to:

(a) the intended use of the business illustration or high net worth illustration as an aid to comparison by customers; and

(b) the requirement in MCOB 2.2.6R that any communication should be clear, fair and not misleading.

(4) The business illustration or high net worth illustration provided in accordance with MCOB 5.7.2R should be based upon the total borrowing that the firm is willing to provide under the regulated mortgage contract. This means that there is no requirement for a firm to provide a further business illustration or high net worth illustration (or business offer document or high net worth offer document) where a customer redraws against payments made under the regulated mortgage contract, providing this redrawing does not exceed the borrowing described in the original business offer document or high net worth offer document.

(5) MCOB 5.6.6R(4) requires that where the term of the regulated mortgage contract is open-ended, the business illustration or high net worth illustration must be based on an assumed term of 12 months and
that this assumption must be stated. This does not mean that a firm is limited in the actual term of the regulated mortgage contract. A firm is able to include in the business illustration or high net worth illustration an explanation that while a 12-month term has been assumed for the purpose of the business illustration or high net worth illustration, the regulated mortgage contract itself will be open-ended.

5.7.4 R Any business illustration or high net worth illustration provided by a firm must be limited to facilities provided under a regulated mortgage contract.

5.7.5 R MCOB 5.6.31R(2), MCOB 5.6.52R(1) and MCOB 5.6.52R(4) prescribe text that should be used to remind a customer with an interest-only mortgage that there is a need to separately arrange for the repayment of capital. The options for repayment of capital may be different where the regulated mortgage contract is for a business purpose or a high net worth mortgage customer, and a firm must vary the prescribed wording in the business illustration or high net worth illustration to reflect this. One approach may be for the firm to revise the wording to reflect how the customer has said he will repay the capital.

5.7.6 R (1) When providing a business illustration or high net worth illustration in accordance with MCOB 5.7.2R a firm should describe facilities provided under the regulated mortgage contract that are not a loan within section 12 (Additional features) of the business illustration or high net worth illustration.

(2) In complying with (1), a firm should follow the requirements in MCOB 5.6.92R - MCOB 5.6.108G where these are relevant. Where the facility is of a type not considered in MCOB 5.6.92R - MCOB 5.6.108G the firm should provide in section 12:

(a) a brief description of the facility involved;

(b) the term of the facility if different from the term described elsewhere in the business illustration or high net worth illustration; and

(c) a summary of any charges, including any early repayment charges, which apply to the operation of the facility.

(3) Full information on any facility described in section 12 must be provided in supplementary materials that accompany the business illustration or high net worth illustration.

5.7.7 G (1) In accordance with MCOB 5.7.6R(1), where the regulated mortgage contract includes a loan, the facilities described in section 12 of the business illustration or high net worth illustration should include the existence of, and a simple explanation of, any all monies charge, any contingent liabilities such as guarantees and so on.

(2) Where the regulated mortgage contract includes more than one loan facility (such as a secured loan and a separate secured overdraft
facility) the business illustration or high net worth illustration should be based upon the primary facility and describe any other loan within section 12.

5.8 Home purchase plans

... Financi al information statement: timing

5.8.1 R A Except in the circumstances in MCOB 5.8.1AR, a firm dealing directly with a customer must ensure that the customer is, or has been, provided with an appropriate financial information statement for a home purchase plan in a durable medium:

1. before the customer submits an application for that particular plan to a home purchase provider; and

2. without undue delay when any of the following occurs:

(a) the firm makes a personal recommendation to advise the particular customer to enter into one or more home purchase plan plans, in which case a financial information statement must be provided at the point the advice is given (and financial information statements for all recommended home purchase plans must be provided), unless the personal recommendation advice is made given by telephone, in which case a firm must ensure the financial statement is or has been provided as soon as practicable after the telephone call; the firm must provide a financial information statement within five business days; or

(b) the firm provides written information that is specific to the amount of finance to be provided on a particular plan; or

(c) the customer requests written information from the firm that is specific to the amount of finance to be provided on a particular plan, unless the firm does not wish to do business with the customer; [deleted]

(d) the customer requests a financial information statement, unless the firm is aware that it is unable to offer that home purchase plan to him; or

(e) as part of an execution-only sale (or potential execution-only sale) the customer has provided the firm with the information in MCOB 4.10.9DR (Execution-only sales) (see MCOB 4.10.9BR and MCOB 4.10.9CR) to indicate which home purchase plan or variation he wishes to enter into.
(3) A firm may comply with (1) and (2) by providing an offer document if this can be done as quickly as providing a financial information statement.

5.8.1A R A firm need not provide a financial information statement:

(1) in relation to a direct deal; or

(2) if the customer refuses to disclose key information (for example, in a telephone conversation, his name or a communication address) or where the customer is not interested in pursuing the enquiry; or

(3) if the firm does not wish to do business with the customer.

5.8.1B R If the firm chooses not to give a financial information statement in the circumstances set out in MCOB 5.8.1AR, where it has given advice on a direct deal, the firm must give the customer a written record of the advice.

... Financial information statement: format ...

5.8.5 R A financial information statement, if not set out in a separate document, must be:

(1) in a prominent place within the other document and clearly identifiable as key information that the customer should read; and

(2) separate from the other content of the document in which it is included.

... Message to be given when providing information on home purchase plans ...

5.8.12 R (1) Except in the circumstances in (2), whenever a firm provides a customer with information specific to the amount of finance to be provided on a particular home purchase plan following an assessment of the customer’s needs and circumstances in order to comply with MCOB 4.10.5DR, it must give, clearly and prominently, the following information:

(a) the same information on the firm’s product range as is required by MCOB 4.4.A1R(1), MCOB 4.4A.2R and MCOB 4.4A.4R (1) (as applied in relation to home purchase plans by MCOB 4.10.3AR); and

(b) that the customer has the right to request a financial information statement for any home purchase plan which the firm is able to
(2) A firm need not give the information in (1) if it has previously given that information in compliance with this rule within the last ten business days.

Message to be given when customer requests an execution-only sale

5.8.13 R Whenever, as part of an execution-only sale (or potential execution-only sale), a customer provides a firm with the information in MCOB 4.10.9DR (Execution-only sales) (see MCOB 4.10.9BR and MCOB 4.10.9CR) the firm must inform the customer, clearly and prominently, unless the firm has previously given this information in compliance with this rule within the last ten business days, that the customer has the right to request a financial information statement for any home purchase plan which the firm is able to offer the customer.

...
(7A) The illustration may state the repayment strategy the customer intends to use.

…

Other information contained in the offer

…

6.4.11A R If the illustration provided by the firm to the customer does not state the repayment strategy the customer intends to use, as permitted by MCOB 6.4.4R(7A), that information must be included in the offer document.

…

6.7 Business loans and loans to high net worth mortgage customers: tailored provisions

6.7.1 R (1) Where the regulated mortgage contract is for a business purpose or a high net worth mortgage customer, a firm may choose to provide a customer with a business offer document or high net worth offer document (as applicable) instead of the offer document referred to in MCOB 6.4.1R.

(2) If a firm provides a customer with a business offer document or high net worth offer document in accordance with (1), it must ensure that:

(a) an updated business illustration or high net worth illustration (as applicable), as required by MCOB 5.7 (Pre-application disclosure for business Business loans and loans to high net worth mortgage customers: tailored provisions), forms part of the business offer document or high net worth offer document; and

(b) subject to the tailoring required by MCOB 5.7 (Pre-application disclosure for business Business loans and loans to high net worth mortgage customers: tailored provisions), the business offer document complies with MCOB 6.4 (Mortgages: Content content of the offer document).

6.7.1A G Firms are reminded that in accordance with MCOB 1.2.3R and MCOB 1.2.3AR, they should either comply in full with MCOB, but in doing so may opt to take account of or comply with all tailored provisions in MCOB that relate to business loans or loans to high net worth mortgage customers (as applicable). Therefore, a firm may only follow the tailored provisions in MCOB 6.7 in relation to one of these sectors if it also follows all other tailored provisions in MCOB that relate to that sector. In either case, the rest of MCOB applies in full.

6.7.2 G MCOB 6.7.1R(2) means, for example, that the required text in MCOB 6.4.4R(7) should be replaced by text that satisfies the requirements for
business illustrations or high net worth illustrations in MCOB 5.7.5R.

6.7.3 G A firm may supplement the first paragraph of text prescribed in MCOB 6.4.4R(5)(a) to clarify that, while the regulated mortgage contract is not binding until the relevant mortgage document has been signed and funds have been released, the business offer document or high net worth offer document may form part of a wider set of negotiated facilities and that the customer is separately bound by these.
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: …

…

…

7.4 **Mortgages: disclosure at the start of the contract**

Disclosure requirements

7.4.1 **R** (Subject to MCOB 7.7.5R) a firm that enters into a regulated mortgage contract with a customer must provide the customer with the following information before the customer makes the first payment under that regulated mortgage contract:

…

(4) confirmation of whether, in connection with the regulated mortgage contract, insurance or investments (such as a repayment vehicle strategy, term assurance, buildings and contents insurance or payment protection insurance) have been purchased through the firm;

…

(8) if all or part of the regulated mortgage contract is an interest-only mortgage, a reminder to the customer to check that a repayment vehicle strategy is in place, if the repayment vehicle strategy is not provided by the firm;

(9) what to do if the customer falls into arrears a payment shortfall, explaining the benefit of making early contact with the firm, providing the address and telephone number of a contact point for the firm and drawing the customer’s attention to the arrears charges set out in the tariff of charges.

…
7.5 Mortgages: statements

Annual statement: content

7.5.3 R The statement required by MCOB 7.5.1R must contain the following:

(1) except in the case of mortgage credit cards, information on the type of regulated mortgage contract, including:

... 

(b) a prominent reminder, where all of the regulated mortgage contract is an interest-only mortgage, that:

(i) the customer’s payments to the firm do not include the any costs of any the repayment vehicle strategy (if that is the case); and...

... 

(c) a prominent reminder, where only part of the regulated mortgage contract is an interest-only mortgage, that:

(i) the customer’s payments to the firm do not include the any costs of any the repayment vehicle strategy (if that is the case); and...

... 

(4) information at the date the statement is issued on:

... 

(e) the cost of redeeming the regulated mortgage contract (this must be shown as the sum of MCOB 7.5.3R(4)(a) and MCOB 7.5.3R(4)(d) plus any linked borrowing that cannot be retained (including the outstanding balances) plus any other charges that can be quantified at the date the statement is issued); if additional charges are payable that cannot be quantified at the point that the statement is issued (for example if the customer is in arrears) a warning must be included to that effect; and...

... 

7.5.4 R In the limited circumstances where it would be unlikely for Where payments are not being made for a repayment vehicle to be set up strategy for an interest-only mortgage (for example, for a short term bridging loan bridging loan) MCOB 7.5.3R(1)(b)(ii) or MCOB 7.5.3R(1)(c)(ii) is replaced with the following: "As all or part of your mortgage is an interest-only mortgage, it assumes that you pay back the total amount borrowed on an interest-only
basis as a lump sum at the end of the mortgage term."

... Annual statement: additional content for customers in arrears

7.5.8 G If a firm chooses to use the annual statement to provide a customer with a regular written statement in accordance with MCOB 13.5.1R (Statements of charges), as described in MCOB 13.5.2G(4), it will need to include the actual payment shortfall payment shortfall in the annual statement.

... 7.6 Mortgages: event-driven information

... Further advances

7.6.7 R Before a customer submits an application to a firm for a further advance on an existing regulated mortgage contract or for a further advance that is a new regulated mortgage contract, if the further advance requires the approval of the mortgage lender, the firm must provide the customer with an illustration that complies with the requirements of MCOB 5 (Pre-application disclosure) and MCOB 7.6.9R to MCOB 7.6.17R for the further advance, unless an illustration has already been provided or the regulated mortgage contract is for a business purpose and the firm has chosen to comply with the tailored provisions for regulated mortgage contracts for a business purpose or loans to high net worth mortgage customers (see MCOB 7.7 (Business loans and loans to high net worth mortgage customers: tailored provisions)).

... 7.6.9 R The illustration provided in accordance with MCOB 7.6.7R must:

... (4) include a clear statement, where all or part of the regulated mortgage contract is an interest-only mortgage and the amount paid in each instalment does not include the cost of a repayment vehicle strategy, to indicate that these payments do not include the cost of any savings plan or other investment.

... 7.7 Business loans and loans to high net worth mortgage customers: tailored provisions

Further advances

7.7.1 R (1) Where, in relation to a regulated mortgage contract for a business purpose or a high net worth mortgage customer, a customer either:
(a) seeks an immediate increase in the borrowing provided under the regulated mortgage contract; or

(b) overdraws on the borrowing under the regulated mortgage contract;

the further advance rules in MCOB 7.6.7R to MCOB 7.6.17R do not apply.

(2) Where (1) applies, the firm must within five business days (for a loan for a business purpose) or in good time before the customer is bound by the regulated mortgage contract (for a high net worth mortgage customer) provide the customer with either:

(a) a business illustration or high net worth illustration (as applicable) for the new total borrowing; or

7.7.1A G Firms are reminded that in accordance with MCOB 1.2.3R, they should either comply in full with MCOB, but in doing so may opt to take account of or comply with all tailored provisions in MCOB that relate to business loans or loans to high net worth mortgage customers. Therefore, a firm may only follow the tailored provisions in MCOB 7.7 in relation to one of these sectors if it also follows all other tailored provisions in MCOB that relate to that sector. In either case, the rest of MCOB applies in full.

7.7.3 R Where a customer applies for a further advance that is a regulated mortgage contract for a business purpose or a high net worth mortgage customer and MCOB 7.7.1R does not apply:

(1) the business illustration or high net worth illustration must be based upon the total borrowing; and

(2) MCOB 7.6.9R to MCOB 7.6.10G and MCOB 7.6.12G do not apply.

Arrangements to repay capital

7.7.4 R Where MCOB 7.6.28R(5) applies, a firm may omit the final sentence of the required text where it is aware, in the context of an interest-only mortgage, that the customer’s intention is not to use a savings plan as a repayment vehicle strategy.

Disclosure

7.7.5 R MCOB 7.4 (Disclosure at the start of the contract) does not apply in relation to a regulated mortgage contract that is for a business purpose or a high net worth mortgage customer.
7.8 Home purchase plans

Annual statement – additional content for customers in arrears

7.8.4 G If a firm uses the annual statement to provide a customer with a written statement relating to arrears, it will need to include the actual payment shortfall in the annual statement (see MCOB 13.5.2G(4)).

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 8.1.1R

<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 8.1.2AR</td>
</tr>
<tr>
<td>equity release adviser</td>
<td>whole chapter except MCOB 8.6, 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 8.1.2AR 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.

(a) makes, or anticipates making, a personal recommendation about; or

(b) gives, or anticipates giving, personalised information relating to;

the customer;

(c) entering into an equity release transaction; or

(d) varying the terms of an equity release transaction entered into by the customer.

(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.

8.1.5 G If a firm is an authorised professional firm, MCOB 1.2.10R(3) has the effect that when the firm conducts non-mainstream regulated activities with a customer, MCOB 4.4 (Initial disclosure requirements) (as modified by MCOB 8) applies. The firm is only required to provide the initial disclosure information in section 7 (What to do if you have a complaint) and section 8 (Are we covered by the Financial Services Compensation Scheme (FSCS)?) of the initial disclosure document or combined initial disclosure document. [deleted]

8.2 Purpose

8.2.1 G The purpose of this chapter for equity release transactions is the same as that for regulated mortgage contracts and home purchase plans in MCOB 4. [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 implements 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 R (1) (a) Subject to (c), MCOB 4.1 to MCOB 4.6A and MCOB 4.8 (with the modifications stated in MCOB 8.3.2BR and to MCOB 8.3.4R) apply to a firm where the home finance transaction is a lifetime mortgage.

(b) MCOB 4.1 to MCOB 4.4A and MCOB 4.8 (with the modifications stated in MCOB 8.3.2BR and to MCOB 8.3.4R) 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.

…

8.3.2 R In applying initial disclosure requirements to equity release transactions, the market for equity release transactions should be treated as one single market with two separate sectors. References to the 'whole market' must be read as references to the whole market for equity release transactions. This is unless the firm only gives personalised information or advice to customers on products in one market sector, in which case references to the 'whole market' must be read as references to the whole market for lifetime mortgages or home reversion plans as the case may be. [deleted]

8.3.2A G The effect of the rules on independence is that a firm that sells lifetime mortgages and home reversion plans from the whole market and enables the customer to pay a fee for the provision of the service, can hold itself out as being 'independent' for the equity release market (see MCOB 4.3.7 R). If the firm offers a service on this basis for only one of these market sectors, then it can only describe itself as 'independent' for that sector. [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 8.3.2BR, 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 8.3.1R.

<table>
<thead>
<tr>
<th>Subject</th>
<th>Rule or guidance</th>
<th>Reference in rule or guidance</th>
<th>To be read as a reference to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advice or information from the whole market</td>
<td>MCOB 4.3.4R(2)</td>
<td>MCOB 4.7.2R</td>
<td>MCOB 8.5.2R</td>
</tr>
<tr>
<td>Initial disclosure requirement (for equity release transactions only)</td>
<td>MCOB 4.4.1R(1)(c) and (3)</td>
<td>MCOB 4 Ann 1R</td>
<td>MCOB 8 Ann 1R</td>
</tr>
<tr>
<td>Initial disclosure requirements</td>
<td>MCOB 4.4.3G</td>
<td>MCOB 4</td>
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</tr>
<tr>
<td>Initial disclosure requirements where initial contact is by telephone (for equity release transactions only)</td>
<td>MCOB 4.4.7R(2)</td>
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</tr>
<tr>
<td>Additional disclosure for distance mortgage mediation contracts</td>
<td>MCOB 4.5</td>
<td>MCOB 4</td>
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<tr>
<td>Non-advised sales</td>
<td>MCOB 4.8.6G</td>
<td>MCOB 4.7</td>
<td>MCOB 8.5</td>
</tr>
</tbody>
</table>

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.

<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>
</tbody>
</table>
MCOB 8.5 is deleted in its entirety and replaced with a new section MCOB 8.5A. The deleted text is not shown and the new text is not underlined.

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.2R:

(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.2R, the firm must nonetheless have regard to MCOB 13.3.

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.5R(1), 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 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.11R does not apply may be relied on as tending to show contravention of MCOB 2.5A.1R (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.13R 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.2R 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.2R (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.

MCOB 8.6 is deleted in its entirety and replaced with a new section MCOB 8.6A. The deleted text is not shown and the new text is not underlined.

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 8.1.2AR, 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

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

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

The conditions for execution-only sales

8.6.4 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 R (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 G (1) The variation in MCOB 8.6A.5R 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.

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.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.

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 R 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.

The following Annex is deleted in its entirety. The deleted text is not shown struck through.

8 Annex 1R: Initial Disclosure Document [deleted]

Amend the following as shown.

9.3 Pre-application disclosure

…

9.3.1 R …

(2) The table in MCOB 9.3.2R shows how the relevant rules and guidance in MCOB 5 must be modified by replacing the cross-references with the relevant cross-references to rules and guidance in MCOB 9.3 and MCOB 9.4 applicable to equity release transactions.

…

9.3.2 R Table of modified cross-references to other rules.

This table belongs to MCOB 9.3.1R.

<table>
<thead>
<tr>
<th>Subject</th>
<th>Rule or guidance</th>
<th>Reference in rule or guidance</th>
<th>To be read as a reference to:</th>
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<tr>
<td>…</td>
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<td></td>
<td></td>
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<tr>
<td>Applying for a lifetime mortgage</td>
<td>MCOB 5.3.2G</td>
<td>MCOB 5.6.26R and MCOB 5.6.27R</td>
<td>MCOB 9.4.26R and MCOB 9.4.27R</td>
</tr>
<tr>
<td>Messages to be given when providing information on equity release transactions</td>
<td>MCOB 5.4.18AR(1)</td>
<td>MCOB 4.7A.2R</td>
<td>MCOB 8.5A.2R</td>
</tr>
<tr>
<td></td>
<td>MCOB 5.4.18AR(1)(a)</td>
<td>MCOB 4.4A.1R(1), MCOB 4.4A.2R and</td>
<td>MCOB 4.4A.1R(1), MCOB 4.4A.2R and</td>
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### Messages to be given when customer requests an execution-only sale

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<th>Rule(s) or guidance replaced by:</th>
</tr>
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<td>Messages to be given when customer requests an execution-only sale</td>
<td><strong>MCOB 5.4.18BR(1)</strong></td>
<td><strong>MCOB 4.8A.14R(1) to (3)</strong> <strong>MCOB 8.6A.4R(2)</strong></td>
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### Guidance relevant to messages given to customer

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<td>Guidance relevant to messages given to customer</td>
<td><strong>MCOB 5.4.18CG</strong></td>
<td><strong>MCOB 5 Annex 1R</strong> <strong>MCOB 9 Annex 1R for a lifetime mortgage; MCOB 9 Annex 2R for a home reversion plan.</strong></td>
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### Tied products

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<td>Tied products</td>
<td><strong>MCOB 5.4.24G</strong></td>
<td><strong>MCOB 5.6.74R</strong> <strong>MCOB 9.4.73R or MCOB 9.4.160R</strong></td>
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### Provision of illustrations: timing

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<tr>
<td>Provision of illustrations: timing</td>
<td><strong>MCOB 5.5.1R(2)(e)</strong></td>
<td><strong>MCOB 4.8A.14R(1) (2) or (3)</strong> <strong>MCOB 8.6A.4R(2)</strong></td>
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### Table of rules in MCOB 5 replaced by rules in MCOB 9: This table belongs to MCOB 9.3.1R

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<td><strong>MCOB 5.4.14R</strong></td>
<td><strong>MCOB 9.3.11R</strong></td>
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### Table of rules in MCOB 5 which do not apply to MCOB 9: This table

<table>
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<th>Rule(s) or guidance replaced by:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Information that is not an illustration</td>
<td><strong>MCOB 5.4.14R</strong></td>
<td><strong>MCOB 9.3.11R</strong></td>
</tr>
</tbody>
</table>

...
9.3.11 R Where a firm provides a customer with information specific to an equity release transaction on a screen:

(1) if the customer initiates the accessing of quotation information on screen (for example, by using the internet or interactive television), the following warning must be displayed equally prominently on each page on screen: This information does not contain all of the details you need to choose an equity release product. Make sure that you read the separate key facts illustration before you make a decision.

(2) a firm must not provide a customised print function where the information on the screen would not be in the form of an illustration if the information were printed in hard copy. [deleted]

9.3.12 R In meeting a request for written information specific to the customer’s requirements on an illustration in relation to a particular equity release transaction (see MCOB 5.5.1R(2)(e)(d)), the firm must not delay the provision of the illustration by requesting information other than:

...
(9) if it is possible for arrears a payment shortfall to occur, what to do if the customer falls into arrears has a payment shortfall, explaining the benefit of making early contact with the firm, providing the name, address and telephone of a contact point with the firm, and drawing the customer’s attention to the arrears charges set out in the tariff of charges;

Disclosure requirements where a lump sum payment is made to the customer and interest is rolled up

9.7.8 R Where the lifetime mortgage provides for a lump sum payment to be made to the customer, and all or part of the interest will be rolled up during the life of the mortgage, the firm must provide the customer with the following information before the customer makes the first payment under the contract, or if no payment are required from the customer, within seven days of completion of the mortgage:

(2) If payments are required from the customer:

(d) what to do if the customer falls into arrears has a payment shortfall, explaining the benefit of making early contact with the firm, providing the name, address and telephone of a contact point with the firm, and drawing the customer’s attention to the arrears charges set out in the tariff of charges;

MCOB 11.1, 11.2 and 11.3 are deleted in their entirety and replaced with new sections MCOB 11.4 et seq. The deleted text is not shown and the new text is not underlined.

11 Responsible lending, and responsible financing of home purchase plans

11.1 Application [deleted]

11.2 Purpose [deleted]

11.3 Responsible lending, and responsible financing of home purchase plans [deleted]

11.4 Application

Who?
11.4.1 R This chapter applies to a firm in a category listed in column (1) of the table in MCOB 11.4.2R in accordance with column (2) of that table.

11.4.2 R This table belongs to MCOB 11.4.1R

<table>
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<th>(1) Category of firm</th>
<th>(2) Applicable section</th>
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<tr>
<td>mortgage lender</td>
<td>Whole chapter</td>
</tr>
<tr>
<td>home purchase provider</td>
<td>Whole chapter except MCOB 11.6.1G (2), MCOB 11.6.5R (3) and (4), MCOB 11.6.18R, MCOB 11.6.19G, MCOB 11.6.20R (2) and (9), MCOB 11.6.40G to MCOB 11.6.59G, MCOB 11.6.60R(2)(e), (3) and (4) and MCOB 11.7.3 R</td>
</tr>
</tbody>
</table>

What?

11.4.3 R This chapter applies:

(1) if a firm enters into a regulated mortgage contract or home purchase plan with a customer; or

(2) if a firm varies an existing regulated mortgage contract or home purchase plan; and

throughout the term of any regulated mortgage contract or home purchase plan which a firm has entered into.

11.5 Purpose

11.5.1 G (1) This chapter requires a firm to treat customers fairly by assessing, before deciding to:

(a) enter into a regulated mortgage contract or home purchase plan; or

(b) vary a regulated mortgage contract or home purchase plan;

whether the customer will be able to repay the sums borrowed and interest (in the case of a regulated mortgage contract) or pay the sums due (in the case of a home purchase plan).

(2) This chapter aims to ensure that customers are not exploited by firms that provide finance in circumstances where the customers are self-evidently unable to repay (or pay) through income and have no alternative means of repayment (or payment).

(3) This chapter sets out some limited exceptions to the requirement to assess the customer’s ability to repay (or pay), including
transitional arrangements in relation to customers with existing regulated mortgage contracts or home purchase plans which satisfy certain conditions.

(4) This chapter also applies in relation to extending the term of a bridging loan.

## 11.6 Responsible lending and financing

### Contents of this section

11.6.1 This section sets out rules and guidance for lenders and providers under regulated mortgage contracts and home purchase plans, in relation to the assessment of affordability for the customer of these contracts. Firms have the option of applying certain of the rules and guidance on a modified basis in relation to regulated mortgage contracts and home purchase plans which are solely for a business purpose or are with high net worth mortgage customers. This section also contains (at MCOB 11.6.41R to MCOB 11.6.52G) additional rules, with accompanying guidance, in relation to regulated mortgage contracts which are interest-only mortgages. These rules:

(a) restrict the circumstances in which interest-only mortgages may be entered into, and impose additional requirements on mortgage lenders in those limited cases where they are permitted; and

(b) provide for an exception to the requirement to assess affordability in relation to those interest-only mortgages which are interest roll-up mortgages, and restrict the circumstances in which interest roll-up mortgages may be used (see MCOB 11.6.57R to MCOB 11.6.59G).

(2) This section also contains (at MCOB 11.6.53E to MCOB 11.6.54G) special provisions for mortgage lenders in relation to bridging loans, including some which apply only where the bridging loan is an interest-only mortgage.

### The assessment of affordability

11.6.2 Except as provided in MCOB 11.6.3R, MCOB 11.6.57R (Interest roll-up mortgages) and MCOB 11.7 (Transitional arrangements):

(a) before entering into, or agreeing to vary, a regulated mortgage contract or home purchase plan, a firm must assess whether the customer (and any guarantor of the customer’s obligations under the regulated mortgage contract or home purchase plan) will be able to pay the
sums due; and

(b) the firm must not enter into the transaction in (a) unless it can demonstrate that the new or varied regulated mortgage contract or home purchase plan is affordable for the customer (and any guarantor).

(2) In MCOB 11.6, references to payment of sums due means:

(a) in the case of a regulated mortgage contract, the making of the payments to repay the sums advanced and interest reasonably expected to be accrued under the regulated mortgage contract; and

(b) in the case of a home purchase plan, the payment of sums due under the home purchase plan;

in each case as they fall due.

(3) In MCOB 11.6, references to the customer must be read as referring also to any guarantor of the customer’s obligations under the regulated mortgage contract, where the context permits.

11.6.3 R (1) MCOB 11.6.2R does not apply to:

(a) entering into a new regulated mortgage contract or home purchase plan as a replacement for an existing regulated mortgage contract or home purchase plan between the customer and the firm (either as the original mortgage lender or home purchase provider or as the transferee of the existing contract), whether or not the new contract relates to the same property; or

(b) a variation of an existing regulated mortgage contract or home purchase plan;

provided the conditions in (2) are satisfied.

(2) The conditions referred to in (1) are that:

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

(b) there is no change to the terms of the regulated mortgage contract or home purchase plan which is likely to be
material to affordability.

(3) \textit{MCOB} 11.6.2R does not apply to a variation to the terms of a \textit{regulated mortgage contract} or \textit{home purchase plan} which is made solely for the purposes of forbearance where the customer has a \textit{payment shortfall}, or in order to avoid a \textit{payment shortfall}.

11.6.4 E (1) If a \textit{firm} treats any of the following changes as not likely to be material to affordability, this may be relied upon as tending to show contravention of \textit{MCOB} 11.6.2R:

(a) an extension of the term of the \textit{regulated mortgage contract} or \textit{home purchase plan} which it is reasonable to expect will extend into the customer’s retirement; or

(b) changing from a \textit{repayment mortgage} to an \textit{interest-only mortgage}, or vice versa; or

(c) the addition or removal of a \textit{customer}.

(2) The list in (1) is not exhaustive.

11.6.5 R When assessing for the purposes of \textit{MCOB} 11.6.2R whether a \textit{customer} will be able to pay the sums due, a \textit{firm}:

(1) must not base its assessment of affordability on the equity in the property which is used as security under the \textit{regulated mortgage contract} or is subject to the \textit{home purchase plan}, or take account of an expected increase in property prices;

(2) must take full account of:

(a) the income of the \textit{customer}, net of income tax and national insurance; and, as a minimum

(b) (i) the customer’s committed expenditure; and

(ii) the basic essential expenditure and basic quality-of-living costs of the customer’s household;

(3) (if it is a \textit{mortgage lender}) must assess affordability on the basis of both repayment of capital and payment of interest over the term, except where lending under an \textit{interest-only mortgage} in accordance with \textit{MCOB} 11.6.41R(1); and

(4) (if it is a \textit{mortgage lender}) must take account of the impact of likely future interest rate increases on affordability, as set out in \textit{MCOB} 11.6.18R.

11.6.6 R For the purposes of \textit{MCOB} 11.6.2R, a \textit{firm} must not rely on a general declaration of affordability by the \textit{customer} or his representative.
Income multiples

11.6.7 G A firm may wish to impose a limit, expressed as a multiple of the customer’s income, on the amount it is prepared to advance under a regulated mortgage contract or home purchase plan. Such an approach is not, of itself, inconsistent with MCOB 11.6.2R but, in accordance with the rules in this section, the firm must be able to demonstrate that the loan is affordable, having taken full account of the customer’s income and expenditure, and (for a mortgage lender) the impact of future likely interest rate increases on affordability.

Income

11.6.8 R In taking account of the customer’s income (in accordance with MCOB 11.6.5R(2)(a)) for the purposes of its assessment of whether the customer will be able to pay the sums due:

(1) a firm must obtain evidence of the income declared by the customer for the purposes of the customer’s application for the regulated mortgage contract or home purchase plan (or variation). The evidence, whether document-based or derived through the use of automated systems, must be of a type and for a period which is adequate to support each element of income that the firm is taking into account, and subject to appropriate anti-fraud controls; and

(2) a firm must not accept self-certification of income by the customer, and the source of the evidence in (1) must be independent of the customer.

11.6.9 G In relation to taking account of the customer’s income for the purposes of its assessment of whether the customer will be able to pay the sums due:

(1) income may be derived from sources other than employment (such as pensions or investments), or from more than one job;

(2) the evidence necessary to comply with MCOB 11.6.8R will vary according to factors such as the employment status and the nature of the employment of the customer (for example, whether he is employed, self-employed, a contractor or retired), his length of employment and, in particular, any elements of income that are not contractually guaranteed. For example: income from overtime working may be evidenced by payslips over a period of time or by checking the level of income regularly paid into a bank account;

(3) for a self-employed customer, a firm may wish to consider using projections of future income, where these form part of a credible business plan;
a firm may use information it already holds about a customer’s income, for example where the customer holds a current account with the mortgage lender;

(5) the source of evidence may be independent of the customer even where it is supplied by the customer; for example, in the form of payslips, bank statements or tax returns;

(6) a firm may use information provided to it by a home finance intermediary or other third party, including electronic sources of information, but the firm will retain responsibility for compliance with this chapter; and

(7) mortgage lenders and home purchase providers are reminded of their obligations under SYSC 8 in respect of outsourcing where they choose to use a third party to verify income information.

Expenditure

11.6.10 R For the purposes of a mortgage lender’s or home purchase provider’s assessment of whether the customer will be able to pay the sums due:

(1) the committed expenditure of a customer in MCOB 11.6.5R(2)(b)(i) is his credit and other contractual commitments which will continue after the regulated mortgage contract or home purchase plan (or variation) is entered into;

(2) the basic essential expenditure of a customer’s household in MCOB 11.6.5R(2)(b)(ii) comprises expenditure for: housekeeping (food and washing); gas, electricity and other heating; water; telephone; council tax; buildings insurance; ground rent and service charge for leasehold properties; and essential travel (including to work or school); and

(3) the basic quality-of-living costs of a customer’s household in MCOB 11.6.5R(2)(b)(ii) are its expenditure which is hard to reduce and gives a basic quality of life (beyond the absolute essential expenditure in (2)).

11.6.11 G (1) Examples of committed expenditure are: credit commitments such as loans and credit cards; hire purchase agreements; child maintenance; alimony; and the cost of a repayment strategy where the customer has an interest-only mortgage (where affordability has not been assessed on a capital and interest basis: see MCOB 11.6.48R (Assessing affordability under an interest-only mortgage)).

(2) Examples of basic quality-of-living costs (which can be reduced, but only with difficulty) are: clothing; household goods (such as furniture and appliances) and repairs; personal goods (such as toiletries); basic recreation (television, some allowance for basic
recreational activities, some non-essential transport); and childcare.

11.6.12 R For the purposes of its assessment of whether the customer will be able to pay the sums due:

(1) a firm may generally rely on any evidence of income or information on expenditure provided by the customer unless, taking a common sense view, it has reason to doubt the evidence or information;

(2) in taking account of the customer’s committed expenditure, a firm must take reasonable steps to obtain details of the customer’s actual outstanding commitments; and

(3) in taking account of the basic essential expenditure and basic quality-of-living costs of a customer’s household, a firm may obtain details of the actual expenditure. Alternatively, it may use statistical data or other modelled data appropriate to the composition of the customer’s household, including the customer, dependent children and other dependents living in the household. If it uses statistical or other modelled data a firm must apply realistic assumptions to determine the level of expenditure of the customer’s household.

11.6.13 G (1) Examples of evidence of income in MCOB 11.6.12R(1) are payslips and bank statements.

(2) If a firm obtains details of the customer’s credit commitments from the customer, it should corroborate the information, for example by making a credit reference agency search or checking credit card or bank statements.

(3) Where the customer’s credit or contractual commitments are due to end shortly after the regulated mortgage contract or home purchase plan (or variation) has been entered into, a firm should take a common sense approach to deciding whether to include those commitments in its assessment of whether the customer will be able to pay the sums due, according to such factors as the remaining term of the commitment and the magnitude of payments required under it.

Future changes to income and expenditure

11.6.14 R If a firm is, or should reasonably be aware from information obtained during the application process, that there will, or are likely to, be future changes to the income and expenditure of the customer during the term of the regulated mortgage contract or home purchase plan, the firm must take them into account when assessing whether the customer will be able to pay the sums due for the purposes of MCOB 11.6.2R.
11.6.15 G (1) Examples of future changes to income and expenditure in MCOB 11.6.14R are: reductions in income that may come about following the customer’s retirement; where it is known that the customer is being made redundant; or where the firm is aware of another loan commitment that will become due during the term of the regulated mortgage contract or home purchase plan, such as an equity loan to assist in property purchase.

(2) If the term of a regulated mortgage contract or home purchase plan would extend beyond the date on which the customer expects to retire (or, where that date is not known, the state pension age), a firm should take a prudent and proportionate approach to assessing the customer’s income beyond that date. The degree of scrutiny to be adopted may vary according to the period of time remaining to retirement when the assessment is made. The closer the customer is to retiring, the more robust the evidence of the level of income in retirement should be. For example, where retirement is many years in the future, it may be sufficient merely to confirm the existence of some pension provision for the customer by requesting evidence such as a pension statement; where the customer is close to retirement, the more robust steps may involve considering expected pension income from a pension statement. In accordance with MCOB 11.6.12R(1), a firm should take a common sense view when assessing any information provided by the customer on his expected retirement date.

(3) Where an additional loan commitment is expected to become due during the term of the regulated mortgage contract or home purchase plan, the mortgage lender should assess whether the regulated mortgage contract or home purchase plan will remain affordable when the loan commitment becomes due, unless there is an appropriate repayment strategy in place to repay that loan, such as through the sale of the property which is the subject of the regulated mortgage contract or home purchase plan.

Debt consolidation and credit-impaired customers

11.6.16 R (1) This rule applies where:

(a) a purpose of a regulated mortgage contract or home purchase plan (or variation) is debt consolidation; and

(b) the customer is a credit-impaired customer.

(2) Subject to (3), where each of the conditions in (1) is satisfied and, if the debts which are to be repaid using the sums raised by the regulated mortgage contract or home purchase plan (or variation) were not repaid, the transaction would not be affordable for the customer, the firm must take reasonable steps to ensure that, on completion of the transaction, those debts are actually repaid.
(3) The requirement in (2) does not apply if the firm has assumed that the customer’s existing debts which are to be repaid using the sums raised by the regulated mortgage contract or home purchase plan (or variation) will not in fact be repaid and, accordingly, include them as committed expenditure in the affordability assessment for the customer.

11.6.17 G The requirement in MCOB 11.6.16R(2) for reasonable steps may be satisfied by the mortgage lender’s, or home purchase provider’s, repaying the committed expenditure directly to the creditors concerned as a condition of granting the regulated mortgage contract or home purchase plan.

Considering the effect of future interest rate rises

11.6.18 R (1) Under MCOB 11.6.5R(4), in taking account of likely future interest rate increases for the purposes of its assessment of whether the customer will be able to pay the sums due, a mortgage lender must consider the likely future interest rates over a minimum period of five years from the expected start of the term of the regulated mortgage contract (or variation), unless the interest rate under the regulated mortgage contract is fixed for a period of five years or more from that time, or for the duration of the regulated mortgage contract (or variation), if less than five years.

(2) A mortgage lender must be able to justify the basis it uses for determining likely future interest rates for the purposes of this rule by reference to market expectations.

(3) For the purposes of this rule, even if the basis used by the mortgage lender in (2) indicates that interest rates are likely to fall, or to rise by less than 1%, during the first five years of the regulated mortgage contract (or variation), a mortgage lender must assume that interest rates will rise by a minimum of 1% over that period.

11.6.19 G In relation to MCOB 11.6.18R(2):

(1) an example of market expectations is the forward sterling rate published on the Bank of England website. A mortgage lender should not use its own forecast; and

(2) a mortgage lender should not link its determination to market expectations without considering the likely effect of rate changes in accordance with the market expectations on the specific regulated mortgage contract in question.

Responsible lending or financing policy

11.6.20 R A firm must put in place, and operate in accordance with, a written policy (which may be contained in more than one document), approved by its governing body, setting out the factors it will take into account in
assessing a customer’s ability to pay the sums due. The policy must address the following matters:

1. how income and expenditure is to be assessed, including (except as provided in MCOB 11.6.32R(1) and MCOB 11.6.39R(1)):
   a. details of the types of income which are acceptable;
   b. the proportion of different income streams which is acceptable;
   c. how variations in income over time, of which the firm is aware, are to be considered;
   d. what is acceptable evidence of income (including the time period to be covered by the evidence); and
   e. how committed expenditure, basic essential expenditure and basic quality-of-living costs are taken into account when assessing affordability;

2. how future interest rates are taken into account when assessing affordability;

3. the calculations used to determine whether the regulated mortgage contract or home purchase plan is affordable;

4. how the mortgage lender’s or home purchase provider’s anti-fraud controls are incorporated into affordability assessments;

5. how the mortgage lender’s or home purchase provider’s method of calculating the size of the advance for each customer, based on a consideration of the customer’s income and expenditure, is to be monitored, including the timing of reviews and key performance indicators to be used (see MCOB 11.6.22R (Monitoring));

6. the actions to be taken if the mortgage lender’s or home purchase provider’s calculation method, referred to in (5), does not perform as expected;

7. how regular audits of compliance with the mortgage lender’s or home purchase provider’s responsible lending or financing policy established in accordance with this rule are to be undertaken (as required by MCOB 11.6.24R);

8. how the record keeping requirements in MCOB 11.6.60R are to be met;

9. (if applicable) the matters required by MCOB 11.6.50R (Interest-only policy); and

10. (if applicable) how the firm will apply the rules in MCOB 11.7
(Transitional arrangements) so as to permit exceptions to its procedures for affordability assessments, to include arrangements for use of management information to monitor its application of those exceptions.

11.6.21 G  Examples of different income streams in *MCOB* 11.6.20R(1)(b) are: income derived from sources other than employment; income from more than one job; and elements of income that are not contractually guaranteed.

Monitoring

11.6.22 R  A *firm* must put in place, and be able to demonstrate that it has, robust systems and controls (including the use of management information and key performance indicators) to monitor the effectiveness of its affordability assessments, including in preventing payment difficulties.

11.6.23 G  Except as provided in *MCOB* 11.6.32R(2) and *MCOB* 11.6.39R(2), the monitoring in *MCOB* 11.6.22R should:

1. include use of management information, key performance indicators and root cause analysis to review and (where appropriate) adjust and improve the mortgage lender’s or home purchase provider’s method of calculating the size of the advance for each customer, based on a consideration of the customer’s income and expenditure; and

2. take place on a regular basis. However, a *firm* should put in place key performance indicators that trigger more frequent reviews; for example, if the incidence of customers being in arrears, or of early arrears, is higher than expected.

11.6.24 R  A *firm* must ensure that its compliance with the responsible lending or financing policy required by *MCOB* 11.6.20R is reviewed at least once per calendar year:

1. in any case where the *firm* has an internal audit function or outsourced equivalent, by that function; and

2. in any other case, by the *firm’s* internal compliance function or an outsourced equivalent.

Alternative provisions for loans which are solely for a business purpose

11.6.25 R  Where a regulated mortgage contract is solely for a business purpose, a *firm* may opt to apply *MCOB* 11.6.26R to *MCOB* 11.6.31R in place of *MCOB* 11.6.5R to *MCOB* 11.6.19G.

11.6.26 R  When assessing for the purposes of *MCOB* 11.6.2R whether a *customer* will be able to pay the sums due, a *firm*:
must not base its assessment of affordability on the equity in the
property which is used as security under the regulated mortgage
contract, or take account of an expected increase in property
prices;

must:

(a) where the repayments will be made from the resources of
the customer:

(i) take full account of the income, net of income tax
and national insurance, or net assets (or both) of
the customer; and the customer’s committed
expenditure; and

(ii) take account, in general terms as a minimum, of
the basic essential expenditure and basic quality-
of-living costs of the customer’s household; and

(b) where the repayments will be made from the financial
resources of the business, take full account of the strength
of those resources;

in a case falling within (2)(b), if the customer is relying on the
business for his personal income, must as a minimum consider in
general terms whether the business can support the customer’s
basic essential expenditure and basic quality-of-living costs;

must assess affordability on the basis of both repayment of capital
and payment of interest over the term, except where lending under
an interest-only mortgage in accordance with MCOB 11.6.41R(1);
and

must take account of the impact of likely future interest rate
increases on affordability.

For the purposes of MCOB 11.6.2R, a firm must not rely on a general
declaration of affordability by the customer or his representative.

In taking account (in accordance with MCOB 11.6.26R(2)) of the
customer’s income or net assets (or both) and the resources of the
business for the purposes of its assessment of whether the customer will
be able to pay the sums due:

(a firm must obtain evidence of the income or net assets (or both)
of the customer and the resources of the business, as declared by
the customer for the purpose of the customer’s application for
the regulated mortgage contract (or variation); and

(a firm must not accept self-certification of income by the
customer, and the source of the evidence in (1) must be
independent of the customer.

11.6.29 R In MCOB 11.6.26R, for the purposes of taking full account of committed expenditure and taking account in general terms of basic essential expenditure and basic quality-of-living costs, the meaning of those phrases is as set out in MCOB 11.6.10R.

11.6.30 G The information which a firm should consider when taking account, for the purposes of MCOB 11.6.26(2)(b), of the strength of the financial resources of the business will vary according to the characteristics of the business, but may include factors such as the cash flow, assets and liabilities of the business.

11.6.31 R If a firm is, or should reasonably be aware from information obtained during the application process, that there will, or are likely to, be future changes to the income and expenditure of the customer, or the resources of the business, during the term of the regulated mortgage contract, the firm must take them into account when assessing whether the customer will be able to pay the sums due for the purposes of MCOB 11.6.2R.

11.6.32 R Where a firm chooses, in accordance with MCOB 11.6.25R, to apply the provisions of MCOB 11.6.26R to MCOB 11.6.31R in place of MCOB 11.6.5R to MCOB 11.6.19G:

(1) its policy in MCOB 11.6.20R(1) need not address each of the matters prescribed in sub-paragraphs (a) to (e) of that rule;

(2) MCOB 11.6.23G does not apply; and

(3) in each case the record-keeping requirements in MCOB 11.6.60R(2)(a) to (d) apply only to the extent relevant, but the record in MCOB 11.6.60R(1) must also include, to the extent relevant:

(a) the customer’s assets and the evidence relied on to assess them; and

(b) the details considered in relation to the resources of the business.

Alternative provisions for loans with high net worth mortgage customers

11.6.33 R Where a regulated mortgage contract is for a high net worth mortgage customer, a firm may opt to apply MCOB 11.6.34R to MCOB 11.6.38R in place of MCOB 11.6.5R to MCOB 11.6.19G.

11.6.34 R When assessing for the purposes of MCOB 11.6.2R whether a customer will be able to pay the sums due, a firm:

(1) must not base its assessment of affordability on the equity in the property which is used as security under the regulated mortgage
contract, or take account of an expected increase in property prices;

(2) must:

(a) take full account of the income, net of income tax and national insurance, or net assets (or both) of the customer; and the customer's committed expenditure; and

(b) take account, in general terms as a minimum, of the basic essential expenditure and basic quality-of-living costs of the customer's household;

(3) must assess affordability on the basis of both repayment of capital and payment of interest over the term, except where lending under an interest-only mortgage in accordance with MCOB 11.6.41R(1); and

(4) must take account of the impact of likely future interest rate increases on affordability.

11.6.35 R For the purposes of MCOB 11.6.2R, a firm must not rely on a general declaration of affordability by the customer or his representative.

11.6.36 R In taking account of the customer's income or net assets (or both) (in accordance with MCOB 11.6.34R(2)(a)) for the purposes of its assessment of whether the customer will be able to pay the sums due:

(1) a firm must obtain evidence of the income or net assets (or both) declared by the customer for the purpose of the customer's application for the regulated mortgage contract (or variation); and

(2) a firm must not accept self-certification of income by the customer, and the source of the evidence in (1) must be independent of the customer.

11.6.37 R In MCOB 11.6.34R, for the purposes of taking full account of committed expenditure and taking account in general terms of basic essential expenditure and basic quality-of-living costs, the meaning of those phrases is as set out in MCOB 11.6.10R.

11.6.38 R If a firm is, or should reasonably be, aware from information obtained during the application process, that there will, or are likely to, be future changes to the income and expenditure of the customer during the term of the regulated mortgage contract, the firm must take them into account when assessing whether the customer will be able to pay the sums due for the purposes of MCOB 11.6.2R.

11.6.39 R Where a firm chooses, in accordance with MCOB 11.6.33R, to apply the provisions of MCOB 11.6.34R to MCOB 11.6.38R in place of MCOB 11.6.5R to MCOB 11.6.19G:
(1) its policy in MCOB 11.6.20R(1) need not address each of the matters prescribed in sub-paragraphs (a) to (e) of that rule;

(2) MCOB 11.6.23G does not apply; and

(3) in each case the record-keeping requirements in MCOB 11.6.60R(1) need not address each of the matters prescribed in sub-paragraphs (a) to (e) of that rule; and

MCOB 11.6.60R(2)(a) to (d) apply only to the extent relevant, but the record in MCOB 11.6.60R(1) must also include, to the extent relevant, the customer’s assets and the evidence relied on to assess them.

Interest-only mortgages

11.6.40 G The rules in this part (MCOB 11.6.41R to MCOB 11.6.49R) provide that interest-only mortgages may be entered into by mortgage lenders in limited circumstances.

Entering into interest-only mortgages

11.6.41 R (1) A mortgage lender may only enter into an interest-only mortgage, or switch a repayment mortgage onto an interest-only basis for all or part of its term, if:

(a) it has evidence that the customer will have in place a clearly understood and credible repayment strategy; and

(b) as far as it is reasonably able to assess at that time, the repayment strategy has the potential to repay the capital borrowed and any interest reasonably expected to be accrued under the interest-only mortgage.

(2) In MCOB 11.6, a reference to an interest-only mortgage is to be read as including any regulated mortgage contract which includes an interest-only period or where part of the sum is advanced on an interest-only basis.

(3) A mortgage lender must not accept speculative repayment strategies for the purposes of (1).

11.6.42 G Firms are reminded that:

(1) interest-only mortgages include those where some, but not all, interest is payable at the end of the term. Accordingly, the requirement in MCOB 11.6.41R(1)(b) applies equally to such interest-only mortgages as it does to those where all of the interest is accrued until the end of the term; and

(2) a lifetime mortgage is a type of interest-only mortgage, as full repayment of capital and interest is not required over the term. Accordingly, the requirements in the Handbook (including in MCOB 11.6 and MCOB 11.7) which apply to interest-only
mortgages apply to lifetime mortgages, unless specifically
disapplied. Depending always on its terms, a lifetime mortgage may
also be an interest roll-up mortgage, as noted in MCOB 11.6.59G.

11.6.43 R MCOB 11.6.41R(1) does not prevent a mortgage lender, when
appropriate, from making a temporary concession, by which he accepts
payment of interest only, with a customer who is in arrears or has a
payment shortfall, or is at risk of arrears or a payment shortfall, on a
regulated mortgage contract.

11.6.44 G Firms are reminded that whether it is appropriate to take the action
contemplated by MCOB 11.6.43R will depend on all the circumstances of
the particular case and must be considered having regard to, among other

11.6.45 G The following are examples of repayment strategies that may, subject to
the circumstances of the customer, be acceptable for the purposes of
MCOB 11.6.41R(1):

(1) regular deposits into a savings or investment product;

(2) the periodic repayment of capital from irregular sources of income
(such as bonuses or some sources of income from self-
employment); and

(3) the sale of assets such as another property or other land owned by
the customer.

11.6.46 E Acceptance by a mortgage lender of any of the following repayment
strategies for the purposes of MCOB 11.6.41R(1) may be relied upon as
tending to show contravention of that rule:

(1) an expectation that the value of the property which is the subject of
the regulated mortgage contract will increase over its term
sufficiently to enable the customer to sell the property to repay the
capital borrowed and, where applicable, pay the interest accrued
under the interest-only mortgage;

(2) an intention on the part of the customer to utilise an expected, but
uncertain, inheritance to repay the capital borrowed and, where
applicable, pay the interest accrued under the interest-only
mortgage; and

(3) the sale of the property which is the subject of the regulated
mortgage contract, where that is the customer’s main residence and
the mortgage lender does not consider whether the property will
have the potential to:

(a) provide sufficient funds for the customer to repay the capital
borrowed and, where applicable, the interest accrued under
the interest-only mortgage; and
(b) allow the customer to purchase a cheaper property to reside in or execute any other associated strategy.

The above list is not exhaustive.

11.6.47 G In complying with MCOB 11.6.41R(1), where a customer’s repayment strategy is the sale of the property which is the subject of the regulated mortgage contract, a mortgage lender may wish to consider, as part of its assessment of that repayment strategy, factors such as the equity in the property when considered in relation to the level of property prices in the relevant area at the time of the consideration or, for a lifetime mortgage, the borrower’s life expectancy.

Assessing affordability under an interest-only mortgage

11.6.48 R For the purposes of MCOB 11.6.2R, where a mortgage lender is lending under an interest-only mortgage in accordance with MCOB 11.6.41R(1), it may assess affordability on the basis of payment of interest only over the term (plus repayment of such capital as may be due to be repaid over the term). If it does so, it must consider as part of the customer’s committed expenditure under MCOB 11.6.5R(2)(b)(i) (or the equivalent alternative provision for transactions with high net worth mortgage customers or solely for business purposes) the cost to the customer of the repayment strategy.

Review during the term of interest-only mortgages

11.6.49 R (1) This rule applies in relation to all interest-only mortgages which a mortgage lender enters into on or after 26 April 2014 except:

(a) lifetime mortgages;

(b) bridging loans; and

(c) any other case where the repayment of capital borrowed and, if applicable, interest accrued, is certain.

(2) Except as set out in (3), a mortgage lender must carry out a review (as a minimum, once) during the term of the mortgage, in which contact is made with the customer, to check that the customer’s repayment strategy is still in place, and that it is still reasonable to expect that the repayment strategy has the potential to repay the capital borrowed and, where applicable, pay the interest reasonably expected to be accrued under the interest-only mortgage. The review must be carried out at a stage of the term when, if the repayment strategy is not in place, or not adequate, there is likely to be sufficient time prior to the end of the term for the customer to take appropriate steps to remedy the situation.

(3) The review in (2) is not required in any case where, despite reasonable efforts to contact the customer, the mortgage lender has
been unable to do so.

(4) Following the review in (1), where appropriate the mortgage lender must take reasonable steps to discuss with the customer what may be done to address the situation.

Interest-only policy

11.6.50  A mortgage lender which enters into interest-only mortgages (unless they are only lifetime mortgages) must include in the policy which is required by MCOB 11.6.20R (Responsible lending and financing policy) a policy on interest-only mortgages, setting out its processes and procedures for ensuring compliance with MCOB 11.6.41R(1) and for safeguarding the interests of customers during the term of interest-only mortgages. This policy must include:

(1) details of the mortgage lender’s plans for lending by way of interest-only mortgages, including its planned volumes of lending on that basis over a specified period, and provision for reviewing the actual volumes of lending on that basis, including the timing and method of review;

(2) specification of the types of repayment strategy which will be considered acceptable, and the evidential requirements and other controls which will be applied to ensure that only such types will be accepted, including the controls to be applied where the repayment strategy is the sale of the property which is the subject of the regulated mortgage contract;

(3) the procedures for checking the existence and adequacy of the repayment strategy in line with the policy, including questions to be asked of the customer;

(4) the arrangements for monitoring and auditing compliance with the policy, processes and procedures (see MCOB 11.6.22R and MCOB 11.6.24R (Monitoring)); and

(5) the process for the review required by MCOB 11.6.49R which, as a minimum:

(a) prescribes the timing of the review;

(b) prescribes the content of the review, including the questions to be asked of the customer and the actions to be taken if the customer proves difficult to contact or otherwise does not co-operate with the review;

(c) sets out how it is to be decided whether the customer’s repayment strategy meets the criteria in MCOB 11.6.49R(2); and
(d) sets out the actions which will be appropriate to be considered during the discussions in MCOB 11.6.49R(2), depending on the circumstances of the customer.

11.6.51 G (1) The controls in MCOB 11.6.50R(2) may include, where appropriate: maximum loan to value limits; minimum equity requirements; regional factors such as property prices; or other eligibility requirements.

(2) The policy and procedures for safeguarding the interests of a customer under an interest-only mortgage should not permit the mortgage lender to change the interest-only mortgage to a repayment mortgage, extend the term or otherwise change the features of the interest-only mortgage unless to do so is compatible with the duties of the mortgage lender under Principle 6 and any other applicable rules and regulations, including those relating to arrears or payment shortfall. A mortgage lender should also have regard to the Unfair Terms Regulations when drafting the provisions of regulated mortgage contracts in relation to changes to their features.

11.6.52 G MCOB 11.6.50R sets out requirements for mortgage lenders to have appropriate procedures for managing interest-only mortgages in order to safeguard the interests of customers. Firms are reminded of the rules and guidance in SYSC (notably SYSC 7.1) relating to systems and controls for the management of risks to which firms themselves are exposed. Firms will need to consider whether their systems and controls are adequate in relation to the management of risks arising from interest-only mortgages.

Assessing the customer’s repayment strategy for bridging loans

11.6.53 E For a bridging loan which is an interest-only mortgage, acceptance by a mortgage lender as a repayment strategy for the purposes of MCOB 11.6.41R(1) of an expectation that, by entering into the bridging loan, the customer’s credit status will be sufficiently improved to enable him to refinance to a longer-term regulated mortgage contract (except where the mortgage lender has evidence of a guaranteed offer for such a longer-term contract) may be relied upon as tending to show contravention of that rule.

11.6.54 G For a bridging loan which is an interest-only mortgage, in complying with MCOB 11.6.41R(1):

(1) where the customer’s repayment strategy is the sale of his existing home, the mortgage lender may wish to consider asking for it to be supported by an independent valuation of that property, as a condition of accepting that repayment strategy; and

(2) where the customer’s repayment strategy is the replacement of the bridging loan with a mainstream regulated mortgage contract, the mortgage lender should not accept that repayment strategy unless
it is reasonably satisfied that a mainstream mortgage lender will be willing to enter into a regulated mortgage contract with the customer. A firm may wish to consider requesting evidence of a guaranteed offer or agreement in principle that will be in place once the existing term of the bridging loan has expired, or obtain the necessary income and expenditure information, in order to be so satisfied.

Extending the term of a bridging loan

11.6.55 R Except in relation to a secured overdraft which is solely for a business purpose or is with a high net worth mortgage customer:

(1) when considering extending the term of a bridging loan, a mortgage lender must comply with MCOB 11.6.2R as if the bridging loan were a new loan;

(2) where MCOB 11.6.2R does not apply in relation to extending the term of a bridging loan (because the bridging loan is an interest roll-up mortgage, and therefore MCOB 11.6.57R applies), the mortgage lender must consider with the customer, before he commits himself to extend the term, the impact of the extension on the customer's remaining equity in the property which is the subject of the bridging loan; and

(3) a firm must not agree to extend the term of a bridging loan unless the customer has made a positive choice to do so.

11.6.56 G Firms are reminded that, when extending the term of a bridging loan to which MCOB 11.6.55R does not apply, in accordance with MCOB 2.5A.1R, they must act honestly, fairly and professionally in accordance with the best interests of their customer.

Interest roll-up mortgages

11.6.57 R The requirements in MCOB 11.6.2R (and any Handbook provisions applicable only to that rule) do not apply in relation to an interest roll-up mortgage.

11.6.58 R A mortgage lender may not enter into an interest roll-up mortgage, or vary an existing regulated mortgage contract so that it becomes an interest roll-up mortgage, unless it is:

(1) a lifetime mortgage; or

(2) a bridging loan; or

(3) a loan to a high net worth mortgage customer; or

(4) a loan solely for business purposes.
Firms are reminded that an interest roll-up mortgage is a type of interest-only mortgage, where no payments of interest or capital are required or anticipated until the mortgage comes to an end. Depending always on their terms, it is possible to structure the types of product set out in MCOB 11.6.58R(1) to (4) as an interest roll-up mortgage. Where that is the case, MCOB 11.6.2R will not apply in relation to them, but MCOB 11.6.40G to MCOB 11.6.52G will apply to all interest roll-up mortgages, to the extent they are permitted by MCOB 11.6.58R.

Record-keeping

A firm must make, in paper or electronic form, an adequate record of the steps it takes to comply with the rules in this chapter in relation to each customer.

(2) The record in (1) must include the information taken into account in each affordability assessment, so that it is possible to understand from the record the basis of the mortgage lender’s or home purchase provider’s lending or financing decision, including (except as provided in MCOB 11.6.32R(3) and MCOB 11.6.39R(3)):

(a) the customer’s income, including, where relevant, a breakdown of the different income types;
(b) the customer’s committed expenditure;
(c) the basic essential expenditure and basic quality-of-living costs of the customer’s household (whether actual expenditure for that household or assumed expenditure from statistical or other modelled data, including information to show why the assumed data is appropriate to that customer’s household);
(d) the evidence relied on to assess income and expenditure;
(e) the rate or assumptions used to test affordability against likely future interest rate rises;
(f) the repayment type and term of the regulated mortgage contract, or the term of the home purchase plan; and
(g) the calculation used to determine whether the regulated mortgage contract, home purchase plan is (or, where applicable, following the variation, remains) affordable for the customer.

In relation to interest-only mortgages, the record in (1) must include:

(a) the reasons for each decision to offer an interest-only
mortgage to a customer;

(b) the evidence of the customer’s repayment strategy and, where applicable, its cost;

(c) details of the firm’s attempts to contact the customer where required by MCOB 11.6.49R; and

(d) the outcome of each review required by MCOB 11.6.49R (whether conducted once during the term of the interest-only mortgage or more frequently).

(4) In relation to the extension of the term of a bridging loan which falls within MCOB 11.6.55R, the record in (1) must include:

(a) the customer’s positive choice to extend the term;

(b) the reasons for the decision to extend the term; and

(c) the evidence of the customer’s repayment strategy and its cost.

(5) A firm must retain the records required by (1) to (4) for the term of the regulated mortgage contract or home purchase plan.

(6) Where a firm enters into or varies a regulated mortgage contract or home purchase plan under MCOB 11.7 (Transitional arrangements), it must keep, for the term of the contract or plan, a record of:

(a) the outstanding balance on the existing contract or plan;

(b) the cost of the repairs or maintenance work to the property, where relevant;

(c) any product fee or arrangement fee financed by any additional borrowing taken on under the contract or increase in the amount of finance provided under the plan; and

(d) the rationale for each decision made to enter into or vary a regulated mortgage contract or home purchase plan under MCOB 11.7 (Transitional arrangements), including why the firm considered it to be in the customer’s best interests.

(7) A firm must make, and keep up to date, an adequate record of the policy required by MCOB 11.6.20R. When the policy is changed, a record of the previous policy must be retained for so long as any regulated mortgage contract or home purchase plan to which it was applicable remains outstanding.

11.6.61 G For the purposes of MCOB 11.6.60R(2)(c) and (g), if it is not practicable
for the firm to record on the customer’s file full details of the calculation method applied, it should record clearly which version of that method was applied in order that the file can be reviewed in conjunction with the applicable version of the method, so that it is possible to reconstruct the lending decision.

11.7 Transitional arrangements

11.7.1 R When considering entering into or varying a regulated mortgage contract or home purchase plan, a firm need not apply the rules in MCOB 11.6.2R to MCOB 11.6.18R inclusive (as modified by MCOB 11.6.25R to MCOB 11.6.31R and MCOB 11.6.33 to MCOB 11.6.38R, where applicable) if it has established, acting reasonably, that the following conditions are satisfied:

(1) the customer has:

(a) an existing regulated mortgage contract (whether or not entered into on or after 31 October 2004) or home purchase plan (whether or not entered into on or after 6 April 2007) which was in existence prior to 26 April 2014; or

(b) an existing regulated mortgage contract or home purchase plan which was entered into in reliance on, and in compliance with, MCOB 11.7;

(2) subject to MCOB 11.7.2R, the proposed regulated mortgage contract or home purchase plan, or variation, would not involve the customer taking on additional borrowing (or, for a home purchase plan, increasing the amount of finance provided under the plan) beyond the amount currently outstanding under the existing regulated mortgage contract or home purchase plan, other than to finance any product fee or arrangement fee for the proposed new or varied contract;

(3) the proposed transaction would be in the customer’s best interests; and

(4) the customer has not, after 26 April 2014 increased the size of the advance under the existing regulated mortgage contract or home purchase plan other than to finance any relevant product fee or arrangement fee in relation to, or the cost of essential repairs or maintenance to the property which is the subject of, that regulated mortgage contract or home purchase plan.

11.7.2 R The condition in MCOB 11.7.1R(2) does not apply if each of the following conditions is satisfied:

(1) the firm is the mortgage lender or home purchase provider under
the existing regulated mortgage contract or home purchase plan in MCOB 11.7.1R(1);

(2) the value of the property which is the subject of the regulated mortgage contract or home purchase plan is at risk if repairs or maintenance work to the property are not carried out;

(3) the funds generated by the additional borrowing or increase in finance provided are to be used to carry out the repairs or maintenance work; and

(4) the firm has obtained credible evidence which demonstrates that the additional borrowing or increase in finance are no more than the cost of the repairs or maintenance work.

11.7.3 R (1) When considering entering into or varying an interest-only mortgage, a mortgage lender need not apply the rules in MCOB 11.6.41R(1), MCOB 11.6.49R, MCOB 11.6.50R and MCOB 11.6.60R(3) if the conditions in MCOB 11.7.1R) are satisfied, and if it has established, acting reasonably, that the existing regulated mortgage contract in MCOB 11.7.1R(1) is an interest-only mortgage.

(2) Where only part of the sum advanced under the existing regulated mortgage contract is on an interest-only basis, (1) applies, but only to that part.

11.7.4 G In accordance with its obligation under Principle 6 to treat its customers fairly, a firm should not treat a customer with whom it enters into or varies a regulated mortgage contract or home purchase plan pursuant to this section 11.7 less favourably than it would treat other customers with similar characteristics, for example by offering less favourable interest rates or other terms.

11.7.5 G Firms should note the record-keeping requirements at MCOB 11.6.60R(6) which apply when regulated mortgage contracts and home purchase plans are entered into or varied under this section.

Amend the following as shown.

12.1 Application

... What?

...

12.1.4 R The arrears payment shortfall charges and excessive charges requirements in this chapter will continue to apply to a firm after a regulated mortgage contract has come to an end following the sale of a repossessed property.
The excessive charges requirements will continue to apply to a firm after a home reversion plan has ended. References in this chapter to ‘customer’ will include references to a former customer as appropriate.

12.1.5 G The FSA will expect a firm to ensure that charges made to a customer arising from the sale of a repossessed property and charges arising in relation to a sale shortfall are not excessive and are subject to the same considerations as apply with respect to arrears payment shortfall charges under this chapter.

...  

12.4 Arrears Payment shortfall charges: regulated mortgage contracts

12.4.1 R (1) A firm must ensure that any regulated mortgage contract that it enters into does not impose, and cannot be used to impose, a charge or charges for arrears a payment shortfall on a customer except where that, unless the firm is able objectively to justify that the charge is equal to or lower than a reasonable estimate calculation of the cost of the additional administration required as a result of the customer being in arrears having a payment shortfall.

(2) Paragraph (1) does not prevent a firm from entering into a regulated mortgage contract with a customer under which the firm may change the rate of interest charged to the customer from a fixed or discounted rate of interest to the firm’s standard variable rate if the customer goes into arrears, providing that this standard variable rate is not a rate created especially for customers in arrears. [deleted]

12.4.1A E The imposition of a charge for arrears a payment shortfall on a customer who is adhering to an arrangement under which the customer and the firm agree that the customer will make payments of a set amount per month (or other agreed period) on agreed dates may be relied upon as tending to show contravention of MCOB 12.4.1R(1).

12.4.1B R When a customer has a payment shortfall payment shortfall in respect of a regulated mortgage contract, a firm must ensure that any payments received from the customer are allocated first towards paying off the balance of the shortfall payment shortfall (excluding any interest or charges on that balance).

12.4.2 G For each type of payment shortfall charge (for example, a monthly arrears management charge), a firm may calculate the same level of arrears charges additional administration costs and payment shortfall charges for all regulated mortgage contracts where the customer is in arrears payment shortfall, rather than performing a calculation on the basis of the individual regulated mortgage contract with the particular customer.
12.4.3 G  Firms are also subject to requirements on information provision and standards relating to arrears and repossessions (see MCOB 13 (Arrears and repossessions)).

12.4.4 R  In calculating the cost of the additional administration required as a result of a customer having a payment shortfall, a firm must not take into account:

(1) the following types of costs:
   (a) funding or capital;
   (b) general bank charges that are not incurred as a result of a customer having a payment shortfall;
   (c) unrecovered fees;
   (d) advertising costs; and
   (e) regulatory fines;

(2) the costs of preparing financial reports for the firm unless there is an objectively justifiable reason to do so and the costs relate solely to the analysis and management of accounts in payment shortfall;

(3) executive staff costs unless there is an objectively justifiable reason to do so and the costs relate to the day-to-day management of customers in payment shortfall.

12.4.5 R  In MCOB 12.4, ‘executive staff’ means the staff or business owners responsible for the management of the firm’s business.

12.4.6 G  (1) For some firms, their executive staff will be the executive board members.

(2) Executive staff costs relating to company strategy, including payment shortfall strategy, should not be included as costs relating to the day-to-day management of customers in payment shortfall.

(3) General financial reporting costs, including all legal and regulatory reporting costs, should not be included as costs relating solely to the analysis and management of accounts in payment shortfall.

12.4.7 G  In calculating the cost of the additional administration required as a result of a customer having a payment shortfall, the firm:

(1) may, where appropriate, take into account the following types of costs:
   (a) providing information or documents;
12.4.8  R  A firm must not impose a charge for a payment shortfall that is calculated as a proportion of the outstanding loan.

12.6  Business loans and loans to high net worth mortgage customers: tailored provisions

12.6.1  G  Firms are reminded that, in relation to a regulated mortgage contract which is solely for a business purpose or is with a high net worth mortgage customer in circumstances where MCOB 7.7.1R applies, if there is a new early repayment charge or a change to the existing early repayment charge, MCOB 7.7.1R(2) requires a firm to notify the customer within five business days of the maximum amount payable as an early repayment charge.

12.6.2  G  Firms are also reminded that in accordance with MCOB 1.2.3R, they should either comply in full with MCOB, but in doing so may opt to take account of or comply with all tailored provisions in MCOB that relate to business loans solely for a business purpose or loans to high net worth mortgage customers.

13  Arrears, payment shortfalls and repossessions: regulated mortgage contracts and home purchase plans

13.1  Application

What?

13.1.5  G  The FSA expects a firm to treat a sale shortfall in the same way that it
treats a payment shortfall, payment shortfall.

...  

13.3 Dealing fairly with customers in arrears with a payment shortfall: policy and procedures

...

13.3.1 R (1) A firm must deal fairly with any customer who:

(a) is in arrears has a payment shortfall on a regulated mortgage contract or home purchase plan;

...

13.3.1A R (1) Where a customer has a payment shortfall in relation to a regulated mortgage contract or home purchase plan, a firm must not attempt to process more than two direct debit requests in any one calendar month.

(2) Where a firm’s direct debit request, in respect of a customer who has a payment shortfall on a regulated mortgage contract or home purchase plan, has been refused, on at least one occasion in each of two consecutive months, due to insufficient funds, the firm must:

(a) consider whether the method of payment remains suitable for the customer;

(b) make reasonable efforts to contact the customer to discuss whether the method of payment remains suitable for the customer; and

(c) not pass on any costs to the customer which were incurred as a consequence of presenting direct debit requests during this period of consideration.

13.3.1B G MCOB 13.3.1AR(2)(c) does not prevent a firm from attempting to process up to two direct debit requests in any one calendar month provided the firm has made reasonable efforts to contact the customer and the customer has failed to respond.

...

13.3.2A R A firm must, when dealing with any customer in payment difficulties:

(1) make reasonable efforts to reach an agreement with a customer over the method of repaying any payment shortfall, payment shortfall or sale shortfall, in the case of the former having regard to the desirability of agreeing with the customer an alternative to taking
possession of the property;

(2) liaise, if the customer makes arrangements for this, with a third party source of advice regarding the payment shortfall or sale shortfall;

(3) allow a reasonable time over which the payment shortfall or sale shortfall should be repaid, having particular regard to the need to establish, where feasible, a payment plan which is practical in terms of the circumstances of the customer;

...

13.3.4A R In complying with MCOB 13.3.2AR(6):

(1) a firm must consider whether, given the individual circumstances of the customer, it is appropriate to do one of more of the following in relation to the regulated mortgage contract or home purchase plan with the agreement of the customer:

...

(d) treat the payment shortfall as if it was part of the original amount provided (but a firm must not automatically capitalise a payment shortfall where the impact would be material); or

...

13.3.4AA R In MCOB 13.3.4AR, the impact of a capitalisation would be material if, either on its own or taken together with previous automatic capitalisations, it increased:

(1) the interest payable over the term of the regulated mortgage contract by £50 or more; or

(2) the contractual monthly repayment amount under the regulated mortgage contract by £1 or more.

13.3.4B R …

...

13.3.4D G In the FSA’s view, in order to comply with Principle 6, firms should not agree to capitalise a payment shortfall save where no other option is realistically available to assist the customer.
13.3.6 G In relation to adopting a reasonable approach to the time over which the payment shortfall, payment shortfall or sale shortfall should be repaid, the FSA takes the view that the determination of a reasonable payment period will depend upon the individual circumstances. In appropriate cases this will mean that repayments are arranged over the remaining term.

Record keeping: arrears, payment shortfalls and repossessions

13.3.9 R (1) A mortgage lender or administrator must make and retain an adequate record of its dealings with a customer whose account is in arrears, has a payment shortfall or who has a sale shortfall, which will enable the firm to show its compliance with this chapter. That record must include a recording of all telephone conversations between the firm and the customer which discuss the sums due any amount in arrears or any amount subject to payment shortfall charges.

(2) A mortgage lender or administrator must retain the record required by (1) for three years from the date of the dealing.

13.3.10 G The record referred to in MCOB 13.3.9R should contain, or provide reference to, matters such as:

(1) the date of first communication with the customer, after the account was identified as being in arrears, having a payment shortfall;

(2) in relation to correspondence issued to a customer in arrears with a payment shortfall, the name and contact number of the employee dealing with that correspondence, where known;

(3) the basis for issuing tailored information in accordance with MCOB 13.7.1R in relation to a loan solely for a business purpose;

(4) information relating to any new payment arrangements proposed;

(5) the date of issue of any legal documents;

(6) the arrangements made for sale after the repossession (whether legal or voluntary); and

(7) the date of any communication summarising the customer’s outstanding debt after sale of the repossessed property; and

(8) the date and time of each call for the purposes of MCOB 13.3.9R(1).

13.4 Arrears: provision of information to the customer of a regulated mortgage contract
13.4.1 R If a customer falls into arrears on a regulated mortgage contract, a firm must as soon as possible, and in any event within 15 business days of becoming aware of that fact, provide the customer with the following in a durable medium:

... 

(3) the total sum of the payment shortfall payment shortfall;

(4) the charges incurred as a result of the payment shortfall payment shortfall;

... 

(6) an indication of the nature (and where possible the level) of charges the customer is likely to incur unless the payment shortfall payment shortfall is cleared.

...

13.4.3 G (1) ...

(2) Where a firm provides the information in MCOB 13.4.1R when a payment shortfall payment shortfall occurs but before the customer’s account falls into arrears, it need not repeat the provision of the information in MCOB 13.4.1R when the customer’s account falls into arrears.

Customer in arrears within the past 12 months

13.4.4 R If a customer’s account has previously fallen into arrears within the past 12 months (and at that time the customer received the disclosure required by MCOB 13.4.1R), the arrears have been cleared and the customer’s account falls into arrears on a subsequent occasion a firm must either:

(1) ...

(2) provide, as soon as possible, and in any event within 15 business days of becoming aware of the further arrears, a statement, in a durable medium, of the payments due, the actual payment shortfall payment shortfall, any charges incurred and the total outstanding debt excluding any charges that may be added on redemption, together with information as to the consequences, including repossession, if the payment shortfall payment shortfall is not cleared.

...

13.5 Dealing with a customer in arrears or with a sale shortfall on a regulated mortgage contract
Statement of charges

13.5.1  R  Where an account is in arrears, and the payment shortfall payment short fall or sale shortfall is attracting charges, a firm must provide the customer with a regular written statement (at least once a quarter) of the payments due, the actual payment shortfall payment short fall, the charges incurred and the debt.

13.5.2  G  …

(3)  If an account in arrears is subject to a payment plan agreed between a firm and a customer, and the account is operating in accordance with that plan, the firm will still need to send the customer a written statement if the payment shortfall or sale shortfall is attracting charges. [deleted]

(4)  Information provided should cover the period since the last statement. Firms may use the annual statement to comply with MCOB 13.5.1R, in which case the annual statement will need to be supplemented to include the actual payment shortfall payment short fall.

...

13.7  Business loans and loans to high net worth mortgage customers: tailored provisions

13.7.1  R  Where the regulated mortgage contract is for a business purpose or is with a high net worth mortgage customer, a firm may as an alternative to MCOB 13.4.1R(1) provide the following information in a durable medium instead of the Money Advice Service information sheet "Problems paying your mortgage":

(1)  details of the consequences if the payment shortfall payment short fall is not cleared;

(2)  a description of the options available to the customer for clearing the payment shortfall payment short fall; and

(3)  (in the case only of loans for a business purpose) details of sources of fee-free advice for business customers.

13.7.2  G  Firms are reminded that in accordance with MCOB 1.2.3R, they should either comply in full with MCOB, but in doing so may opt to take account of or comply with all tailored provisions in MCOB that relate to business loans solely for a business purpose or loans to high net worth mortgage customers. Therefore, a firm may only follow the relevant tailored provisions in MCOB 13.7, if it also follows all other relevant tailored provisions in MCOB. In either case, the rest of MCOB applies in full.
## Schedule 1  Record keeping requirements

### Sch 1.3  G

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...  

|MCOB 4.4A.23G| Disclosures| Appropriate records of disclosures required by section 4.4A| When disclosure made| As required by SYSC 9 |

|MCOB 4.7.17R (1)(a)| Suitability| Details of the customer information obtained, including the customer's needs and circumstances, for the purpose of assessing the suitability of a regulated mortgage contract| When the personal recommendation is made| Three years |

<p>|MCOB 4.7.17R (1)(b)| Suitability| An explanation of the reasons why the firm believes the personal recommendation complies with the suitability| When the personal recommendation is made| Three years |</p>
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<td>Three years</td>
</tr>
<tr>
<td><strong>MCOB 4.8A.18R (1)(b)</strong></td>
<td><strong>Execution-only sales of regulated mortgage</strong></td>
<td>The warning to the customer in a durable medium regarding his lack of protection of</td>
<td>The date a regulated mortgage contract was entered into or arranged</td>
<td>Three years</td>
</tr>
<tr>
<td><strong>MCOB 4.8A.18R (1)(c)</strong></td>
<td><strong>Execution-only sales of regulated mortgage contracts</strong></td>
<td><strong>The customer’s confirmation of his positive election to proceed with an execution-only sale</strong></td>
<td><strong>The date a regulated mortgage contract was entered into or arranged</strong></td>
<td><strong>Three years</strong></td>
</tr>
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<td>-----------------------------</td>
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</tr>
<tr>
<td><strong>MCOB 4.8A.18R (1)(d)</strong></td>
<td><strong>Execution-only sales of regulated mortgage contracts</strong></td>
<td><strong>Details of advice rejected.</strong></td>
<td><strong>The date a regulated mortgage contract was entered into or arranged</strong></td>
<td><strong>Three years</strong></td>
</tr>
<tr>
<td><strong>MCOB 4.8A.18R (3)</strong></td>
<td><strong>Execution-only sales of regulated mortgage contracts</strong></td>
<td><strong>The firm’s policy for managing execution-only sales</strong></td>
<td><strong>When the policy is made</strong></td>
<td><strong>One year from when the policy is changed</strong></td>
</tr>
<tr>
<td><strong>MCOB 4.10.9BR</strong></td>
<td><strong>Execution-only sales of home purchase plans</strong></td>
<td><strong>Information provided by the customer about the home purchase plan he wishes to purchase; the warning to the customer in a durable medium regarding his lack of protection of the rules on assessing suitability; the customer’s confirmation of his positive election to proceed with an execution-only sale.</strong></td>
<td><strong>The date a home purchase plan was entered into or arranged</strong></td>
<td><strong>Three years</strong></td>
</tr>
<tr>
<td><strong>MCOB 4.10.13R(1)(a)</strong></td>
<td><strong>Suitability of home purchase plans</strong></td>
<td><strong>Customer information obtained for the purposes of assessing suitability of a home purchase plan</strong></td>
<td><strong>When advice given</strong></td>
<td><strong>Three years</strong></td>
</tr>
<tr>
<td><strong>MCOB 4.10.13R(1)(b)</strong></td>
<td><strong>Suitability of home purchase plans</strong></td>
<td><strong>An explanation of why the firm has concluded its advice is suitable</strong></td>
<td><strong>When advice given</strong></td>
<td><strong>Three years</strong></td>
</tr>
<tr>
<td><strong>MCOB 4.10.13R(1)(c)</strong></td>
<td><strong>Advice on home purchase plans</strong></td>
<td><strong>Any advice rejected, including the reasons rejected and details of any home purchase plan the customer has</strong></td>
<td><strong>When advice given</strong></td>
<td><strong>Three years</strong></td>
</tr>
<tr>
<td><strong>FSA 2012/46</strong></td>
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<tr>
<td>proceeded with as an execution-only sale</td>
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</tr>
</tbody>
</table>

... |

**MCOB 4.11.8R**  
**Customer information on which an assessment of the affordability and appropriateness suitability and basis of advice for a regulated sale and rent back agreement was based**  
**Customer information on his income, expenditure, resources, needs, objectives and individual circumstances**  
**The date on which the firm reached a conclusion on affordability and appropriateness assessed suitability**  
**Five years, or one year after the end of the fixed term of the tenancy agreement, if later** |

... |

**MCOB 8.5.22R(1) (a)**  
**Suitability**  
**Details of the customer information obtained, including the customer’s needs and circumstances, for the purpose of assessing the suitability of an equity release transaction**  
**When the personal recommendation is made**  
**Three years** |

**MCOB 8.5.22R(1) (b)**  
**Suitability**  
**An explanation of the reasons why the firm believes the personal recommendation complies with suitability requirements in MCOB 8.5.4R(1)**  
**When the personal recommendation is made**  
**Three years** |

**MCOB 8.5.22R(1) (b)**  
**Suitability**  
**An explanation of the reasons why a personal recommendation has been made on a basis other than that described in MCOB 8.5.17E(1)**  
**When the personal recommendation is made**  
**Three years** |

**MCOB 8.3.1R(1)**  
**Scripted questions**  
**A record of the scripted questions used in non-advised sales**  
**The date on which the scripted questions are first used**  
**One year from the date on which the scripted questions**
<table>
<thead>
<tr>
<th>Regulation</th>
<th>Section</th>
<th>Record Type</th>
<th>Details</th>
<th>Time Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>MCOB</td>
<td>8.3.1R(1)</td>
<td>Notice of cancellation</td>
<td>A record of the fact that notice has been given (including the original notice instructions and a copy of any receipt of notice issued)</td>
<td>When the firm first becomes aware that notice has been served</td>
</tr>
<tr>
<td>MCOB</td>
<td>8.5A.19R (1)(a)</td>
<td>Suitability of equity release transactions</td>
<td>Customer information obtained for the purposes of assessing suitability of an equity release transaction</td>
<td>When advice given</td>
</tr>
<tr>
<td>MCOB</td>
<td>8.5A.19R (1)(b)</td>
<td>Suitability of equity release transactions</td>
<td>An explanation of why the firm has concluded its advice is suitable</td>
<td>When advice given</td>
</tr>
<tr>
<td>MCOB</td>
<td>8.5A.19R (1)(c)</td>
<td>Advice on equity release transactions</td>
<td>Any advice rejected, including the reasons rejected and details of any regulated mortgage contract the customer has proceeded with as an execution-only sale</td>
<td>When advice given</td>
</tr>
<tr>
<td>MCOB</td>
<td>8.5A.19R (1)(d)</td>
<td>Rolling-up of fees or charges into loan</td>
<td>The customer’s positive choice to add fees or charges to the sum advanced</td>
<td>When choice made</td>
</tr>
<tr>
<td>MCOB</td>
<td>8.6A.9R</td>
<td>Execution-only sales of equity release transactions</td>
<td>Information provided by the customer about the equity release transaction he wishes to purchase; the warning to the customer in a durable medium regarding his lack of protection of the rules on assessing suitability; the customer’s confirmation of his positive election to proceed with an execution-only sale; any advice from the firm which the customer rejected</td>
<td>The date a home purchase plan was entered into or arranged</td>
</tr>
<tr>
<td>MCOB 11.3.1R(2)</td>
<td>Ability of the customer to repay advance</td>
<td>Evidence to demonstrate that the firm has taken into account the customer’s ability to repay</td>
<td>When the assessment of the customer’s ability to repay is made</td>
<td>One year from the date on which the regulated mortgage contract is entered into, or the further advance provided</td>
</tr>
<tr>
<td>MCOB 11.3.4R(2)</td>
<td>Responsible lending policy</td>
<td>A record of the firm’s written policy setting out the factors the firm will take into account in assessing the customer’s ability to repay</td>
<td>The date on which the policy is set</td>
<td>One year from the date on which the policy is replaced</td>
</tr>
<tr>
<td>MCOB 11.6.60R(1) to (4)</td>
<td>Responsible lending and financing</td>
<td>Steps taken to comply with rules including: information taken into account in each affordability assessment; in relation to interest-only mortgages, the reasons for the offer decision, evidence relating to the customer’s repayment strategy; details of the firm’s attempts to contact the customer and the outcome of each mid-term review; information relating to the extension of the term of bridging loans which are neither with a high net worth mortgage customer nor or a secured overdraft solely for a business purpose</td>
<td>When regulated mortgage contract or home purchase plan (or variation) is entered into, or the mid-term review takes place</td>
<td>The term of the contract or plan</td>
</tr>
</tbody>
</table>

including the reasons why it was rejected.
<table>
<thead>
<tr>
<th><strong>MCOB 11.6.60R(6)</strong></th>
<th><strong>Transitional arrangements</strong></th>
<th><strong>The cost of repairs or maintenance work to the property</strong></th>
<th><strong>When new contract or variation is entered into</strong></th>
<th><strong>For the term of the regulated mortgage contract or home purchase plan</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>(b)</strong></td>
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<tr>
<td><strong>MCOB 11.6.60R(6)</strong></td>
<td><strong>Transitional arrangements</strong></td>
<td><strong>Any product fee or arrangement fee financed by any additional borrowing or increase in finance</strong></td>
<td><strong>When new contract or variation is entered into</strong></td>
<td><strong>For the term of the regulated mortgage contract or home purchase plan</strong></td>
</tr>
<tr>
<td><strong>(c)</strong></td>
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<td></td>
<td></td>
</tr>
<tr>
<td><strong>MCOB 11.6.60R(6)</strong></td>
<td><strong>Transitional arrangements</strong></td>
<td><strong>The rationale for each decision to enter into or vary a contract under MCOB 11.7</strong></td>
<td><strong>When new contract or variation is entered into</strong></td>
<td><strong>For the term of the regulated mortgage contract or home purchase plan</strong></td>
</tr>
<tr>
<td><strong>(d)</strong></td>
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<td></td>
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</tr>
<tr>
<td><strong>MCOB 13.3.9R</strong></td>
<td><strong>Responsible lending and financing policy</strong></td>
<td><strong>The firm’s policy, setting out the factors it will take into account in assessing a customer’s ability to pay the sums due</strong></td>
<td><strong>When the policy is made</strong></td>
<td><strong>For so long as any regulated mortgage contract or home purchase plan to which it was applicable remains outstanding.</strong></td>
</tr>
<tr>
<td><strong>Dealings with customers in arrears with a payment shortfall, or with a mortgage sale shortfall debt</strong></td>
<td></td>
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</tbody>
</table>

The date of the dealing
Three years from the date on which the record is made
Part 2: **Comes into force on 26 October 2012**

11.8 Customers unable to change regulated mortgage contract, home purchase plan or provider

11.8.1 Where a customer is unable to:

(1) enter into a new regulated mortgage contract or home purchase plan or vary the terms of an existing regulated mortgage contract or home purchase plan with the existing mortgage lender or home purchase provider; or

(2) enter into a new regulated mortgage contract or home purchase plan with a new mortgage lender or home purchase provider;

the existing mortgage lender or home purchase provider should not (for example, by offering less favourable interest rates or other terms) take advantage of the customer’s situation or treat the customer any less favourably than it would treat other customers with similar characteristics. To do so may be relied on as tending to show contravention of Principle 6 (Customers’ interests).
Annex E

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

16 Annex 18BG

NOTES FOR COMPLETION OF

THE RETAIL MEDIATION ACTIVITIES RETURN (‘RMAR’)

...

Section G: Training & Competence (‘T&C’)

...

Section G: guide for completion of individual fields

<table>
<thead>
<tr>
<th>What types of advice were provided?</th>
<th>For each type of advice, the firm should indicate whether or not staff have provided advice on that basis / business type. In relation to their home finance mediation activities, firms are not required by MCOB 4.4A to use a label to describe the service they provide to customers. In filling out this section they should simply answer ‘no’ for each category relating to their home finance mediation activities.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Independent (whole of market plus option of fee-only)</td>
<td>To hold itself out as acting independently, a firm carrying on home finance mediation activity must consider products from across the whole of the market, and offer its clients the opportunity to pay by fee (MCOB 4.3.7R).</td>
</tr>
<tr>
<td>-----------------------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>

...
5.3 Reference to other sourcebooks or manuals

Mortgages: Conduct of business sourcebook

5.3.8 **MCOB** 1.2.10R provides that **MCOB** does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities* except for **MCOB** 2.2 (Clear, fair and not misleading communication), and **MCOB** 3 (Financial promotion) and to a limited extent **MCOB** 4.4 (Initial disclosure requirements).
Annex G

Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text.

4.4 What is a regulated mortgage contract?

…

Type of lending

4.4.11 G The definition of regulated mortgage contract also covers a variety of types of product. Apart from the normal mortgage loan for the purchase of property, the definition also includes other types of secured loan, such as secured overdraft facility, a secured bridging loan bridging loan, a secured credit card facility and regulated lifetime mortgage contracts under which the borrower (usually an older person) takes out a loan where repayment of the capital (and in some cases the interest) is not required until the property is sold, usually on the death of the borrower.