MORTGAGES (RESPONSIBLE LENDING) INSTRUMENT 2019

Powers exercised

A. The Financial Conduct 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 137A (General rule-making power);
(2) section 137T (General supplementary powers); and
(3) section 139A (Guidance).

B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on 28 October 2019.

Amendments to the Handbook

D. The Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) is amended in accordance with Annex A to this instrument.

E. The Supervision manual (SUP) is amended in accordance with Annex B to this instrument.

Citation

F. This instrument may be cited as the Mortgages (Responsible Lending) Instrument 2019.

By order of the Board
24 October 2019
Annex A

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.

11 Responsible lending, and responsible financing of home purchase plans

... 

11.4 Application

Who?

...

11.4.2 R This table belongs to MCOB 11.4.1R

<table>
<thead>
<tr>
<th>(1) Category of firm</th>
<th>(2) Applicable section</th>
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</thead>
<tbody>
<tr>
<td>...</td>
<td>...</td>
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<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 MCOB 11.6.20R(9), MCOB 11.6.40G to MCOB 11.6.59G, MCOB 11.6.60R(2)(e), (3) and (4), and MCOB 11.7.3R and MCOB 11.9.</td>
</tr>
<tr>
<td>mortgage administrator</td>
<td>MCOB 11.9.2R and MCOB 11.9.14R.</td>
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Insert the following new section, MCOB 11.9, after MCOB 11.8 (Customers unable to change regulated mortgage contract, home purchase plan or provider). The text is not underlined.

11.9 Remortgaging with the same or a different lender with no additional borrowing

Application and purpose

11.9.1 R (1) Subject to (2), this section applies to a firm in relation to a customer who:
(a) is a borrower under a regulated mortgage contract ("the existing regulated mortgage contract"), whether with that firm or a different firm; and

(b) wishes to enter into a new regulated mortgage contract ("the proposed regulated mortgage contract") with that firm to replace the existing regulated mortgage contract.

(2) But this section only applies if:

(a) the proposed regulated mortgage contract would not involve the customer borrowing:

(i) a capital amount greater than that outstanding under the existing regulated mortgage contract at the date of the customer’s application for the proposed regulated mortgage contract; or

(ii) where a purpose of the proposed regulated mortgage contract is to replace two or more existing regulated mortgage contracts, a capital amount greater than the cumulative capital amount outstanding under those contracts at that date; disregarding any increase that is exclusively for the purpose of financing a product fee or arrangement fee for the proposed regulated mortgage contract or a fee charged by a mortgage intermediary for arranging or advising on regulated mortgage contracts in relation to the proposed regulated mortgage contract;

(b) the proposed regulated mortgage contract is to be secured on the same property as the existing regulated mortgage contract;

(c) on the date on which the customer applies for the proposed regulated mortgage contract:

(i) there is no sum that has become due under the terms of the existing regulated mortgage contract that constitutes a payment shortfall; and

(ii) at no point in the period of 12 months ending on that date has there been a sum that has become due under the terms of the existing regulated mortgage contract that constituted a payment shortfall;

(d) the written policy required by MCOB 11.6.20R (responsible lending policy) addresses how the firm will apply the rules in this section; and
(e) the firm has and operates an internal switching policy (see MCOB 11.9.12R).

(3) For the purposes of this section, linked borrowing which is linked to an existing regulated mortgage contract is to be treated as if it were an existing regulated mortgage contract.

11.9.2 R MCOB 11.9.14R (notice to customers) also applies to a firm that has permission for administering a regulated mortgage contract.

11.9.3 G (1) The purpose of this section is to facilitate borrowers switching mortgages, provided that they are not taking out additional borrowing. But the mortgage does not have to be exactly like-for-like and the borrower can, for example:

(a) extend the term of the mortgage, for example to replace a mortgage with 10 years remaining with a new mortgage with a 25-year term;

(b) consolidate a first charge regulated mortgage contract and one or more second charge regulated mortgage contracts into the proposed regulated mortgage contract (but unsecured loans and other debts cannot be consolidated, unless the unsecured loan or debt is linked borrowing which is linked to an existing regulated mortgage contract);

(c) move from an interest-only mortgage to a repayment mortgage (provided it is more affordable); or

(d) take a mortgage with a different type of interest rate, for example to move from a variable rate to a fixed rate.

(2) This section permits firms to choose to modify certain provisions when assessing a customer’s ability to afford a mortgage. The provisions capable of modification are grouped (such as the provisions linked to the assessment of income and expenditure). Firms can choose whether to adopt all, some, or none of the modifications in this section, on a case-by-case basis (though they cannot modify some provisions in a group and not others). However, we would expect firms to have regard to Principle 6 (“A firm must pay due regard to the interests of its customers and treat them fairly”) and not unfairly apply rules in one case but not another where the customers’ circumstances are otherwise the same.

(3) But the firm must have an internal switching policy in place and operate in accordance with it, if it wishes to rely on the rules in this section. This means that, if the firm has allowed a customer to remortgage to it, it will allow the customer the benefit of the rules in this section again, or rely on MCOB 11.6.3R or MCOB 11.7 (if relevant), if the customer wants to switch again to a more affordable product with the firm (see MCOB 11.9.12R). In addition, the firm’s
responsible lending policy (see MCOB 11.6.20R) must set out how the firm will apply the rules in this section.

(4) Where a customer has a payment shortfall and has entered into a repayment arrangement with their current mortgage lender, the customer should be treated as having a payment shortfall until such time as the shortfall is repaid. This would be the case even though the customer may have started to have a payment shortfall more than 12 months before the date on which they apply for the proposed regulated mortgage contract but they are (and have been) up to date with payments under the repayment arrangement. Where a payment shortfall has been capitalised in accordance with MCOB 13, the firm may treat the customer as eligible provided that the capitalisation occurred more than 12 months before the date on which the customer applies for the proposed regulated mortgage contract and the customer has made all the payments due under the mortgage contract during those 12 months on time.

The assessment of affordability

11.9.4 R (1) A firm may elect that the modifications to the rules in MCOB specified in (2) are to apply in relation to the proposed regulated mortgage contract. The firm may not elect that only some of those modifications apply in relation to the proposed regulated mortgage contract but not others.

(2) (a) MCOB 11.6.2R does not apply, but MCOB 11.9.5R applies in its place.

(b) MCOB 11.6.3R and 11.6.4E do not apply.

(c) MCOB 11.6.5R and 11.6.6R do not apply.

11.9.5 R (1) The firm must not enter into the proposed regulated mortgage contract unless that contract is more affordable for the customer (and any guarantor) than the existing regulated mortgage contract.

(2) The proposed regulated mortgage contract is more affordable than the existing regulated mortgage contract if:

(a) the aggregate amount of:

   (i) the monthly payments due from the customer under that contract in respect of any discounted or introductory period, or (where there is no discounted or introductory period) in respect of the term of the proposed regulated mortgage contract; and

   (ii) any product fee or arrangement fee due from the customer in relation to that contract, and any fee charged by a mortgage intermediary for arranging or advising on
regulated mortgage contracts in relation to that contract, which the customer intends to pay without including it in the amount being lent under the proposed regulated mortgage contract;

is less than the aggregate amount due from the customer under the existing regulated mortgage contract (or all the existing regulated mortgage contracts, if more than one) in respect of the proposed regulated mortgage contract’s discounted or introductory period or (where there is no discounted or introductory period) in respect of the term of each existing regulated mortgage contract;

(b) the monthly payment that was due from the customer under the existing regulated mortgage contract (or the aggregate of the monthly payments due under all the existing regulated mortgage contracts, if more than one) in each of the 12 months before the date on which the customer applies for the proposed regulated mortgage contract, ignoring any atypical payments, was greater than:

(i) the typical monthly payment which would be due from the customer under the proposed regulated mortgage contract in any discounted or introductory period; or

(ii) (where there is no discounted or introductory period) the typical monthly payment which is expected to be due for the term of the proposed regulated mortgage contract;

and

(c) the interest rate applicable under the proposed regulated mortgage contract:

(i) in respect of any discounted or introductory period; or

(ii) (where there is no discounted or introductory period) that which is expected to apply during the term of the contract;

is lower than the interest rate currently applicable under the existing regulated mortgage contract (or each existing regulated mortgage contract, if more than one).

11.9.6 G (1) MCOB 11.6.7G does not apply in relation to a regulated mortgage contract entered into under rules disapplied by virtue of MCOB 11.9.4R.

(2) MCOB 11.9.5R(2) determines whether one regulated mortgage contract is more affordable than another. The references in that rule:
(a) to a discounted or introductory period include, for example, any fixed rate period after which a different interest rate applies, and any period in respect of which interest is deferred. Where interest is due in respect of a discounted or introductory period but is deferred, it is the gross rate payable that should be considered for the purposes of the conditions in MCOB 11.9.5R(2), as if interest were not deferred;

(b) to a typical monthly payment should be taken to ignore any payment in respect of a period greater or less than a month (for example, where a first payment is larger, or smaller, than that which would normally be due because it relates to a period greater or less than a month);

(c) to aggregate amounts due under the existing regulated mortgage contract should be taken to be on the assumption that that contract would not be redeemed early and would not incur an early repayment charge; and

(d) to future payments or interest rates should be taken to be on the assumption that there is no variation to the reference rate in question, unless the regulated mortgage contract expressly provides for a variation (for example, when considering a lifetime Bank of England base rate tracker, it should be assumed that the Bank of England base rate will remain unchanged).

Assessment of income and expenditure

11.9.7 R (1) A firm may elect that the modifications to the rules in MCOB specified in (2) are to apply in relation to the proposed regulated mortgage contract. The firm may not elect that only some of those modifications apply in relation to the proposed regulated mortgage contract but not others.

(2) (a) MCOB 11.6.8R, 11.610R and 11.6.12R (income and expenditure) do not apply.

(b) MCOB 11.6.14R (future changes to income and expenditure) does not apply, but if the term of the proposed regulated mortgage contract extends beyond the date on which the customer (or, where there are joint borrowers, one of them) expects to retire or, where that date is not known, the date on which the customer will reach the state pension age, the firm must consider whether the customer’s income beyond that date would be sufficient to enable them to meet their commitments under the contract.

(c) MCOB 11.6.18R (considering the effect of future interest rate rises) does not apply.
11.9.8 G (1) MCOB 11.9.7R modifies the affordability assessment required by MCOB 11.6, in line with the modification to MCOB 11.6.2R made by MCOB 11.9.4R. This is on the basis that a customer who has evidenced an ability to afford a mortgage at a higher monthly payment than that which would be charged under the proposed regulated mortgage contract may be treated as likely to be able to afford the proposed regulated mortgage contract.

(2) MCOB 11.6.9G, 11.6.11G, 11.6.13G and 11.6.15G do not apply in relation to a regulated mortgage contract entered into under rules which are disapplied by virtue of MCOB 11.9.7R.

(3) If the term of the proposed regulated mortgage contract extends beyond the date on which the customer (or, where there are joint borrowers, one of them) expects to retire or, where that date is not known, will reach the state pension age, the firm should take a prudent and proportionate approach to considering whether the customer’s income beyond that date would be sufficient to enable them to meet their commitments under the contract. 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.

(4) This section does not prevent a firm from undertaking an investigation of the customer’s financial circumstances before offering to enter into a regulated mortgage contract with the customer. Where a firm does so, it may take into account that the customer is not in payment shortfall and that the proposed regulated mortgage contract is more affordable than the existing regulated mortgage contract when determining the nature and degree of that investigation. In particular, the firm may also wish to consider whether it is necessary to require the same information from the customer as it would from a customer who does not currently have a regulated mortgage contract.

(5) If the firm is considering the effect of future interest rate rises on the prospect of the customer meeting their obligations under the proposed regulated mortgage contract, the firm may wish to have regard to the extent to which the interest rate applicable to the existing regulated mortgage contract is higher than that applicable to the proposed regulated mortgage contract. The firm may also wish to have regard to the fact that the customer is not in payment shortfall in relation to the existing regulated mortgage contract.
Interest-only mortgages

11.9.9  R  (1)  A firm may elect that all of MCOB 11.6.41R, 11.6.43R, 11.6.46E, 11.6.46AR, 11.6.48R and 11.6.50R do not apply in relation to the proposed regulated mortgage contract.

(2)  But a firm may not make an election under (1) if:

(a)  the existing regulated mortgage contract is a repayment mortgage and the proposed regulated mortgage contract is an interest-only mortgage; or

(b)  under the terms of the proposed regulated mortgage contract, the capital amount that will be outstanding at the end of that contract may be higher than that which would be outstanding at the end of the existing regulated mortgage contract (or the aggregate of that which would be outstanding at the end of each existing regulated mortgage contract, if more than one).


(2)  MCOB 11.6.49R (review during the term of interest-only mortgages) applies to an interest-only mortgage entered into by a firm which has made an election under MCOB 11.9.9R(1).

Explanation of affordability assessment, and accompanying warning

11.9.11  R  (1)  This rule applies if a firm makes an election under any of the following rules:

(a)  MCOB 11.9.4R (assessment of affordability);

(b)  MCOB 11.9.7R (assessment of income and expenditure);

(c)  MCOB 11.9.9R (interest-only mortgages).

(2)  The firm must provide the customer with an explanation which indicates:

(a)  what steps the firm has taken to ascertain that the proposed regulated mortgage contract is more affordable than the existing regulated mortgage contract; and

(b)  how the steps it has taken differ from the steps it would have taken under MCOB 11.6 if the firm had not applied rules in this section.
(3) The firm must accompany the explanation with a warning (as relevant to the individual case) that:

(a) interest rates may increase and the customer could end up paying a higher interest rate than they are currently paying under the existing regulated mortgage contract, even though the firm has assessed that the proposed regulated mortgage contract is currently more affordable;

(b) the firm’s assessment that the proposed regulated mortgage contract is currently more affordable has not taken into account any early repayment charges that the customer may incur in relation to repaying their existing regulated mortgage contract; and

(c) where the term of the proposed regulated mortgage contract is to end later than the term of the existing regulated mortgage contract, the customer may end up paying more in interest overall as a result of entering into the proposed regulated mortgage contract.

(4) The firm must provide the explanation and the warning:

(a) in a durable medium; and

(b) no later than the firm provides the customer with an offer document.

(5) The firm need not provide an explanation or a warning under this rule if a mortgage intermediary has already provided the explanation and the warning to the customer in relation to the proposed regulated mortgage contract.

Internal switching policy

11.9.12 R (1) An internal switching policy is a policy which:

(a) is made or approved by the governing body of the firm; and

(b) commits or obliges the firm:

(i) to permit an eligible customer to enter into a more affordable regulated mortgage contract (see MCOB 11.9.5R(2)); and

(ii) to apply such of the rules in this section as may be necessary to enable that customer to enter into that contract (though the firm may apply other rules in addition if it wishes), or to rely on MCOB 11.6.3R or MCOB 11.7 (if relevant) to enable that customer to enter into that contract.
(2) For the purposes of an internal switching policy, a customer must be eligible if:

(a) the firm has entered into the existing regulated mortgage contract as the lender;

(b) the firm chose to apply one or more of the rules in this section in relation to the existing regulated mortgage contract;

(c) the customer wishes to enter into a more affordable regulated mortgage contract with the firm (see MCOB 11.9.5R(2)); and

(d) the customer meets the conditions in MCOB 11.9.1R(2)(c)(i) and (ii).

11.9.13 E If a firm has an internal switching policy but does not, without good reason:

(1) permit an eligible customer to enter into a more affordable regulated mortgage contract; or

(2) apply MCOB 11.6.3R or MCOB 11.7 (if relevant) or such of the rules in this section as may be necessary to enable that customer to enter into the more affordable regulated mortgage contract;

this may be relied on as tending to show contravention of Principle 6.

Notice to customers

11.9.14 R (1) For the purpose of this rule, a customer is a notifiable customer if, when the firm makes the determination required by this rule:

(a) the customer meets the conditions in MCOB 11.9.1R(2)(c)(i) and (ii), and there is no fee or charge which has become payable under the regulated mortgage contract and remains unpaid beyond the date on which it was due to be paid;

(b) the customer’s regulated mortgage contract is:

(i) not a lifetime mortgage; and

(ii) for residential purposes, and the customer does not have the lender’s consent to let the property; and

(c) the regulated mortgage contract had a discounted or introductory period which has expired (such that the interest rate payable by the customer under that contract is a reversion or standard variable rate).

(2) A firm with permission for administering a regulated mortgage contract must have, and operate in accordance with, a strategy for:
(a) determining whether each of the customers in relation to whom the firm is carrying on that activity for an unregulated owner is a notifiable customer; and

(b) giving the notice required by this rule at least once to each such notifiable customer.

(3) For the purposes of (2), an unregulated owner is a person who does not have permission for entering into a regulated mortgage contract and:

(a) who entered into the regulated mortgage contract as lender; or

(b) to whom the rights of the lender under regulated mortgage contract have passed by legal or equitable assignment, or by operation of law.

(4) A firm which has permission for entering into a regulated mortgage contract but is no longer carrying on that activity in relation to a particular portfolio or book of regulated mortgage contracts must have, and operate in accordance with, a strategy for:

(a) determining whether each of the customers in that portfolio or book is a notifiable customer; and

(b) giving the notice required by this rule at least once to each such notifiable customer.

(5) The notice must:

(a) include a statement to the effect that it has recently become simpler for a customer to enter into a more affordable mortgage with another lender if the customer is not looking to borrow any more than they currently owe under their mortgage and has kept up to date with their mortgage payments over the last 12 months; and

(b) refer the customer to sources of information about how to switch their mortgage to a lender who applies the rules in this section.

(6) A notice under this rule must be in a durable medium.

(7) A firm is not required to give a notice under this rule to a customer in relation to a regulated mortgage contract if another person has given such a notice to the customer in relation to that contract.

11.9.15 R (1) The governing body of the firm must adopt or approve the strategy required by MCOB 11.9.14R no later than 1 May 2020.
(2) The firm must make the determination and give the notice required by MCOB 11.9.14R no later than 1 September 2020.

11.9.16  G In developing and implementing their strategy for notifying relevant borrowers of the possibility of switching lender under this section, firms should have regard both to the purpose of this section and to the likely timescales for lenders to be ready to offer mortgages to borrowers in reliance on the rules in this section. For example, they should neither notify borrowers before there are lenders ready to make use of the rules in this section, nor delay sending notices until shortly before 1 September 2020 (as to do so might leave borrowers paying for a less affordable mortgage for longer than is necessary).
Annex B

Amendments to the Supervision manual (SUP)

In this Annex, striking through indicates deleted text.

16 Reporting requirements

16 Reporting fields

This is the annex referred to in SUP 16.11.7R.

... 2 SPECIFIC REPORTING FIELDS

... (c) Mortgages

... Notes

... Notes

<table>
<thead>
<tr>
<th>Data reporting field</th>
<th>Code (where applicable)</th>
<th>Notes</th>
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<tbody>
<tr>
<td>Sales Data (report for all regulated mortgage contracts)</td>
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<td>Mortgage characteristics</td>
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<td>EL = a second charge regulated mortgage contract that is a shared equity credit agreement</td>
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<td>‘Cashback’ should only be reported where it is not being provided as an incentive to pay legal costs and valuation fees.</td>
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<td>RM = a remortgage under MCOB 11.9 which does</td>
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<td>‘RM’ or ‘RR’ should be used where the mortgage lender has relied on any of the rules in MCOB 11.9 (Remortgaging with the same or a different lender with no additional borrowing) in relation to the regulated mortgage contract. ‘RR’ should be used if the term of the...</td>
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not extend into retirement

RR = a remortgage under MCOB 11.9 which extends into retirement

NA = not applicable

proposed regulated mortgage contract extends beyond the date on which the customer (or, where there are joint borrowers, one of them) expects to retire or, where that date is not known, will reach the state pension age; otherwise, ‘RM’ should be used.

Affordability data

Do not report affordability data when affordability assessment has not been undertaken, i.e. for an interest roll-up mortgage.

Similarly, do not report affordability data if the mortgage lender has applied any of the rules in MCOB 11.9 (Remortgaging with the same or a different lender with no additional borrowing) in relation to the regulated mortgage contract, unless the term of the proposed regulated mortgage contract extends beyond the date on which the customer (or, where there are joint borrowers, one of them) expects to retire or, where that date is not known, will reach the state pension age. In that case, report only the following data elements: ‘Retirement age of first borrower’ and ‘Retirement age of second borrower’.

TP 1  Transitional provisions

TP 1.10  Mortgage activities

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<td>2</td>
<td>SUP 16.11.3R, SUP 16.11.5R, SUP 16.11.7R, SUP</td>
<td>R</td>
<td>When submitting a sales data report required by SUP 16.11.7R in relation to a regulated mortgage contract entered into in</td>
<td>From 28 October 2019 to 31 March 2021.</td>
<td>On 28 October 2019.</td>
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16.11.8R and *SUP 16 Annex 21R*, reliance on the *rules in MCOB 11.9*, a firm (or its reporting agent appointed under *SUP 16.11.11R*) may, in relation to that contract, elect to comply with the provisions of *SUP 16 Annex 21R* as if:

1. the amendments to that Annex made by the Mortgages (Responsible Lending) Instrument 2019 had not been made; and
2. the contract were entered into in reliance on the *rules in MCOB 11.7*. 