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MCOB 2 : Conduct of business standards: general

Financial Conduct Authority (FCA)

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Chapter 2

Conduct of business standards: general

2.1 Application

Who?

2.1.1 **R** This chapter applies to a *firm* in a category listed in column (1) of the table in **■ MCOB 2.1.2 R** in accordance with column (2) of that table.

2.1.2 **R** This table belongs to **■ MCOB 2.1.1 R**

(1) Category of firm	(2) Applicable section
<i>mortgage lender</i>	whole chapter except MCOB 2.6A.1 R to MCOB 2.6A.18 G and MCOB 2.8.6 G
<i>mortgage administrator</i> <i>mortgage adviser</i> <i>mortgage arranger</i>	As for a <i>mortgage lender</i> , except that MCOB 2.6A.-1 R does not apply.
<i>home purchase provider</i>	MCOB 2.1,, MCOB 2.5 to MCOB 2.6, MCOB 2.6A.1 R to MCOB 2.6A.4 G, MCOB 2.6A.7 G to MCOB 2.6A.10 G, MCOB 2.7.4 R to MCOB 2.7.6 R, MCOB 2.7A, MCOB 2.8.6 G and MCOB 2.9
<i>home purchase administrator</i>	As for a <i>home purchase provider</i> but MCOB 2.6A.1 R to MCOB 2.6A.4 G and MCOB 2.6A.7 G do not apply
<i>home purchase adviser</i> <i>home purchase arranger</i>	As for a <i>home purchase provider</i> but MCOB 2.6A does not apply
<i>reversion provider</i>	whole chapter except MCOB 2.6A.7 G, MCOB 2.7.4 R to MCOB 2.7.6 R and MCOB 2.8.6 G
<i>reversion administrator</i> <i>reversion arranger</i>	As for a <i>reversion provider</i> but the relevant provisions of MCOB 2.6A apply only when <i>arranging</i> for a <i>home reversion plan</i> to be entered into by a <i>reversion occupier</i> with, or <i>administering</i> a <i>home reversion plan</i> provided by, an <i>unauthorised reversion provider</i> .
<i>reversion adviser</i>	As for a <i>reversion provider</i> but MCOB 2.6A does not apply
<i>SRB administrator</i>	MCOB 2.1, MCOB 2.5 to

(1) Category of firm	(2) Applicable section
	MCOB 2.6, MCOB 2.6A.5BR (5), MCOB 2.6A.8 R to MCOB 2.6A.11 G, MCOB 2.6A.17A R, MCOB 2.6A.18 G, MCOB 2.7.1 G to MCOB 2.7.5 R, MCOB 2.7A, MCOB 2.8.1 G to MCOB 2.8.5 G and MCOB 2.9.
<i>SRB adviser</i>	Whole chapter except MCOB 2.6A.5 R, MCOB 2.6A.7 G, MCOB 2.6A.17 R and MCOB 2.8.6 G.
<i>SRB agreement provider</i>	Whole chapter except MCOB 2.6A.5 R, MCOB 2.6A.7 G, MCOB 2.6A.17 R, MCOB 2.6A.17A R, MCOB 2.6A.18 G and MCOB 2.8.6 G.
<i>SRB arranger</i>	Whole chapter except MCOB 2.6A.5 R, MCOB 2.6A.7 G, MCOB 2.6A.17 R and MCOB 2.8.6 G.
<i>a firm that communicates or approves a financial promotion of qualifying credit or of a home reversion plan</i>	MCOB 2.5, MCOB 2.6, MCOB 2.7 (except, when the <i>financial promotion</i> relates to a <i>home reversion plan</i> , MCOB 2.7.4 R to MCOB 2.7.6 R), MCOB 2.7A, MCOB 2.8 (except MCOB 2.8.6 G) and MCOB 2.9
<i>a firm that communicates or approves a financial promotion of a home purchase plan</i>	MCOB 2.5, MCOB 2.6, MCOB 2.7, MCOB 2.7A, MCOB 2.8.6 G and MCOB 2.9

What?

2.1.3

R

This chapter applies in relation to:

- (1) *home finance activities;*
- (1A) to the extent specified in ■ MCOB 2.1.2 R, *regulated sale and rent back activity;*
- (2) those activities in ■ MCOB 12 and ■ MCOB 13 that are carried on after a *regulated mortgage contract* or *home purchase plan* has come to an end following the sale of a *repossessed* property, and those activities in ■ MCOB 12 that are carried on after a *home reversion plan* has ended for any reason; and
- (3) the *communication* or *approval* of a *financial promotion* of *qualifying credit*, of a *home purchase plan*, of a *home reversion plan* or of a *regulated sale and rent back agreement*.

2.1A Regulated mortgage contracts: guidance on the meaning of “payment shortfall”

2.1.1A **G** A *payment shortfall* is defined in the *Handbook* as the total sum of periodic payments of capital or interest (or both) that have become due under the terms of a *regulated mortgage contract* but which, in breach of those terms, remains unpaid. For the purpose of that definition, capital includes any amounts rescheduled over the term of the loan. An amount that has been rescheduled for payment over the remaining term of the mortgage in accordance with the terms of the contract does not form part of a *payment shortfall*. If, following such rescheduling, the *customer* misses a recalculated periodic payment, the full amount of that missed payment becomes part of the *customer’s payment shortfall*. Such rescheduling may only be done in a way that is consistent with the *FCA’s rules*, including those in ■ **MCOB 13**.



2.3 Inducements: regulated mortgage contracts, home reversion plans and regulated sale and rent back agreements

Purpose

2.3.1 **G** The purpose of **■** MCOB 2.3 is to ensure, in accordance with *Principles 1, 6 and 8*, that a *firm* does not conduct business under arrangements that might give rise to a conflict with its duty to *customers* or to unfair treatment of them.

Prohibition of inducements

2.3.2 **R** A *firm* must take reasonable steps to ensure that it, and any *person* acting on its behalf, does not:

- (1) offer, give, solicit or accept an inducement; or
- (2) direct or refer any actual or potential business in relation to a *regulated mortgage contract, home reversion plan or regulated sale and rent back agreement* to another *person* on its own initiative or on the instructions of an *associate*;

if it is likely to conflict to a material extent with any duty that the *firm* owes to its *customers* in connection with such a *home finance transaction* or any duty which such a recipient *firm* owes to its *customers* in connection with such a *home finance transaction*.

2.3.3 **G** An inducement is a benefit offered with a view to bringing about a particular course of action.

2.3.4 **G** The purpose of **■** MCOB 2.3.2 R(2) is to prevent the requirement in **■** MCOB 2.3.2 R(1) being circumvented by an inducement being given or received by an unregulated *associate*. There may be circumstances, however, where a *firm* is able to demonstrate that it could not reasonably have knowledge of an *associate* giving or receiving an inducement. It should not, however, direct business to another *person* on the instruction of an *associate* if this is likely to conflict with the interests of its *customers*.

2.3.5 **G** **■** MCOB 2.3.2 R does not prevent a *firm*:

- (1) assisting a *home finance intermediary* so that the quality of the *home finance intermediary's* service to *customers* is enhanced; or

- (2) giving or receiving indirect benefits (such as gifts, hospitality and promotional competition prizes);

providing in either case this is not likely to give rise to a conflict with the duties that the recipient owes to the *customer*. In particular, such benefits should not be of a kind or value that is likely to impair the ability of a *firm* to act in compliance with any *rule* in *MCOB*, for example the suitability requirements in ■ *MCOB* 4.7 (Advised sales).

2.3.6

R

- (1) A *firm* must not operate a system of giving or offering inducements to a *mortgage intermediary*, *reversion intermediary*, *SRB intermediary* or any other third party whereby the value of the inducement increases if the intermediary or third party, such as a packager, exceeds a target set for the amount of business referred (for example, a volume override).
- (2) A *firm* must not solicit or accept an inducement whereby the value of the inducement increases if the *firm* exceeds a target set for the amount of business referred.

Quantification of inducements

2.3.7

R

- (1) A *mortgage lender*, *reversion provider* or *SRB agreement provider* must quantify, in cash terms, any material inducement it offers to a *mortgage intermediary*, *reversion intermediary*, *SRB intermediary* or a third party.
- (2) In quantifying the value of the material inducement, the *firm* must include any subsequent payments (such as a trail fee) made where the *customer* continues with the *samehome finance transaction*.

2.3.8

G

- (1) Quantification of any material inducement offered by the *mortgage lender* or *reversion provider* supports the disclosure requirements elsewhere in *MCOB*. Further *guidance* on the disclosure of any inducement in cash terms is provided in ■ *MCOB* 5.6.118 G for *regulated mortgage contracts* other than *lifetime mortgages*, ■ *MCOB* 9.4.124 G for *lifetime mortgages* and ■ *MCOB* 9.4.173 G for *home reversion plans*.
- (1A) Quantification of any material inducement offered by a *SRB agreement provider* in connection with the conclusion of a *regulated sale and rent back agreement* must be included in the disclosures made to the potential *SRB agreement seller* under ■ *MCOB* 5.9.1R (1A)(c).
- (2) A payment made to a third party unconnected with the *home finance intermediary*, where that payment only reflects the cost of outsourcing work relating to the processing of mortgage applications, would not be considered an inducement for these purposes.



2.4 High pressure sales: regulated mortgage contracts, home reversion plans and regulated sale and rent back agreements

Purpose

2.4.1 **G** The purpose of this section is to remind *firms* of the relevance of the high level standards in *PRIN*, especially with regard to the use of sales methods that may lead a *customer* to feel pressurised to enter into, or vary, a *regulated mortgage contract, home reversion plan or regulated sale and rent back agreement*.

Fair treatment

- 2.4.2 **G**
- (1) *Principle 6* (Customers' interests) requires that a *firm* must pay due regard to the interests of its *customers* and treat them fairly. This means, for example, that a *firm* should avoid selling practices that commit *customers* (or lead *customers* to believe that they are committed) to any *regulated mortgage contract or home reversion plan* before they have been able to consider the *illustration and offer document*. One such practice might be to present a new *customer* with an *illustration, offer document* and mortgage deed at one time and to require the mortgage deed to be signed on the same occasion (when there is no urgent need to do so).
 - (2) For *regulated sale and rent back agreements*, the *firm* should avoid practices that commit *customers* (or lead *customers* to believe they are committed) to any such agreement before they have been able to consider the information that is required by **MCOB 5.9.1 R** (Pre-sale disclosure) and before the expiry of the 14 day cooling-off period as required by **MCOB 6.9.4 R** (Written pre-offer document: Stage One).

Information

2.4.3 **G** *Principle 7* (Communications with clients) requires that a *firm* must pay due regard to the information needs of its *clients*, and communicate information to them in a way which is clear, fair and not misleading. This means, for example, that a *firm* should avoid giving any *customer* a false impression about the availability of a *regulated mortgage contract, home reversion plan or regulated sale and rent back agreement*, such as describing it as a 'special offer' not available after a certain date unless this is really the case.

2.5 Reliance on others

Purpose

- 2.5.1 **G** *Principle 2* requires a *firm* to conduct its business with due skill, care and diligence. ■ MCOB 2.5 indicates the extent to which *firms* that carry on *home finance activities* and that *communicate* or *approve a financial promotion* can meet this requirement by relying on others.

When firms can rely on others

- 2.5.2 **R** A *firm* will be taken to be in compliance with any *rule* in *MCOB* that requires a *firm* to obtain information to the extent that the *firm* can show that it was reasonable for it to rely on information provided to it by another *person*.

- 2.5.3 **E**
- (1) In relying on ■ MCOB 2.5.2 R, a *firm* should take reasonable steps to establish that the other *person* providing the information is:
 - (a) not connected with the *firm*; and
 - (b) competent to provide the information.
 - (2) Compliance with (1) may be relied on as tending to establish compliance with ■ MCOB 2.5.2 R.
 - (3) Contravention of (1) may be relied on as tending to establish contravention of ■ MCOB 2.5.2 R.

- 2.5.4 **R**
- (1) Any information which a *rule* in *MCOB* requires to be sent to a *customer* may be sent to another *person* on the instruction of the *customer*, so long as the recipient is not connected with the *firm*.
 - (2) There is no need for a *firm* to send information to a *customer* where it has taken reasonable steps to establish that this has been or will be supplied by another *person*.



2.5A The customer's best interests

2.5A.1

R

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

[Note: article 7(1) of the *MCD*]

2.6 Exclusion of liability

Purpose

- 2.6.1 **G** *Principle 6 (Customers' interests) requires a firm to pay due regard to the interests of its customers and treat them fairly. A firm may not exclude the duties it owes or the liabilities it has to a customer under the regulatory system. It may exclude other duties and liabilities only if it is reasonable for it to do so.*

Limits on the exclusion of liability

- 2.6.2 **R** *A firm must not, in any written or oral communication, seek to exclude or restrict, or to rely on any exclusion or restriction of, any duty or liability it may have to a customer under the regulatory system.*
- 2.6.3 **R** *A firm must not, in any written or oral communication to a customer, seek to exclude or restrict, or to rely on any exclusion or restriction of, any duty or liability not referred to in **MCOB 2.6.2 R** unless it is reasonable for it to do so.*

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 customer's interests: home purchase plans, home reversion plans and regulated sale and rent back agreements

2.6A.1 **R** A *firm* must ensure that the interests of its *customer* under a *home purchase plan, home reversion plan or regulated sale and rent back agreement* are protected to a reasonable standard.

2.6A.2 **G** Circumstances that a *firm* should consider include how the *customer* will be protected in the event of:

- (1) the *failure* of a *reversion provider, home purchase provider or SRB agreement provider*;
- (2) the transfer of a *reversion provider's, home purchase provider's or SRB agreement provider's* interest (or the interest the provider would have had, had it not nominated a third party to hold it) in the property to a third party;
- (3) other dealings by a *reversion provider, home purchase provider or SRB agreement provider* (or its nominee) with a third party; and

(4) a reversion provider's, home purchase provider's or SRB agreement provider's (or its nominee's) failure to perform obligations owed to third parties, or imposed by statute.

2.6A.3

G

The steps that a *firm* might take in order to protect its *customer's* interests will depend on a number of factors, including the nature and structure of the *home purchase plan*, *home reversion plan* or *regulated sale and rent back agreement* and the jurisdiction in which the property is situated. If it is not possible to achieve reasonable protection (for example, due to impediments under a particular legal system) then a *firm* should not enter into, arrange or administer the plan.

2.6A.4

G

- (1) In the *FCA's* view, a *customer's* interests will include:
- (a) protection of the *customer's* rights under the plan, in particular the right to occupy the property throughout its term;
 - (b) protection of any interest (legal or beneficial) that the *customer* retains, acquires or is intended to acquire in the property, including the expectation that such interests will be unencumbered by third party interests;
 - (c) that, where a *customer* pays sums under a *home purchase plan* towards the purchase price of the property, those sums will be applied towards the purchase price. Or, in circumstances where that is not practicable (for example, on *repossession*), that an appropriate amount will be returned to the *customer*; and
 - (d) a *customer's* contractual entitlement to receive certain sums back after a qualifying period, such as where it has been agreed that a certain percentage of discount will be refunded to the *customer* after a set period of tenancy.
- (2) The protections that a *firm* should consider include:
- (a) the extent to which different forms of tenure protect the tenant's right to occupy the property and afford protection against removal. In particular, granting the *customer* a licence to occupy the property is unlikely to provide an adequate level of security;
 - (b) (except in Scotland) the need for any agreement under which a *customer* has a right to acquire an interest in the property to be specifically enforceable;
 - (c) the extent to which appropriate registrations, restrictions, notices or other entries should be made in the relevant land register;
 - (d) the timing of entries in the relevant land register and who should be responsible for making them; and
 - (e) the *customer's* need for a full and clear understanding of all the steps that the *firm* expects him or his advisers to take to protect his interests both at the time the plan is entered into, and throughout its duration.

Protecting customers' interests: additional material for home reversion plans

2.6A.5

R

Unless it is satisfied on reasonable grounds based on the *customer's* knowledge, expertise and experience that it is unnecessary, a *firm* must

obtain from its *customer's* legal adviser, before its *customer* enters into a *home reversion plan*, confirmation that:

- (1) he has been instructed to ensure that the *customer's* legal rights under the plan are protected to a reasonable standard; and
- (2) he has explained to the *customer* those aspects of the *customer's* legal rights and obligations under the *home reversion plan* that he needs to understand.

Protecting customer's interests: regulated sale and rent back agreements

2.6A.5A

R

A *firm* must ensure that before a *SRB agreement seller* enters into a *regulated sale and rent back agreement*, the *SRB agreement seller* is made aware of the availability and importance of independent legal or professional advice.

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*:
 - (a) the entitlement of the *SRB agreement seller* (or trust beneficiary or related person) to occupy the property is governed by a tenancy, which is structured:
 - (i) if the property is in England and Wales, as an assured tenancy (including an assured shorthold tenancy) under the Housing Act 1988 (as amended);
 - (ii) if the property is in Scotland, as an assured tenancy (including a short assured tenancy) under the Housing (Scotland) Act 1988, (as amended); and
 - (iii) if the property is in Northern Ireland, as a private tenancy under the Private Tenancies (Northern Ireland) Order 2006;
 - (b) the tenancy is for a fixed term of no less than five years;
 - (c) the terms of the tenancy provide for the tenant to terminate the tenancy during the fixed term on no more than three months' notice (and with no other conditions attached); and
 - (d) each of the terms of the tenancy is fair.
- (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:
 - (a) give the landlord power to determine the tenancy in certain circumstances as referred to in section 5(1) of the Housing Act 1988, as amended; or
 - (b) otherwise make provision for the tenancy to be brought to an end by the landlord save on a ground or grounds for possession applicable for an assured tenancy under the Housing Act 1988, as amended; or

- (c) make provision for the tenancy to be brought to an end on any of Grounds 2, 6, 8 or 9 under the Housing Act 1988, as amended.

A *firm* may not rely during the fixed term of the tenancy on any ground for possession of the property other than a ground for possession on which the terms of the tenancy may under this paragraph (2) make provision for the tenancy to be brought to an end by the landlord, and a *firm* may only rely on any ground for possession if it is fair for the *firm* to do so.

- (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:

- (a) any provision for it to be brought to an end by the landlord during the fixed term other than a ground for possession applicable for an assured tenancy under the Housing (Scotland) Act 1988, as amended; or
- (b) Grounds 2, 6, 8 or 9 under the Housing (Scotland) Act 1988, (as amended).

A *firm* may not rely during the fixed term of the tenancy on any ground for possession of the property other than the grounds permitted under this paragraph (3) to be included in the terms of the tenancy, and a *firm* may only rely on any ground for possession if it is fair for the *firm* to do so.

- (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:

- (a) any provision which would permit the landlord to forfeit the lease and obtain possession of the property during the fixed term unless the provision is equivalent to a ground for possession applicable for an assured tenancy under Schedule 2 to the Housing Act 1988, as amended, in England; or
- (b) any provision which would permit the landlord to forfeit the lease and obtain possession of the property on the basis that:
 - (i) a mortgagee (or chargee) under a mortgage (or charge) entered into by the landlord requires vacant possession for the purposes of exercising a power of sale of the property; or
 - (ii) the landlord intends to demolish or reconstruct, or carry out substantial works on, the property or any part of the property; or
 - (iii) there are arrears of rent, unless the conditions applicable to either Ground 9 or Ground 10 under the Housing Act 1988, as amended, in England, are satisfied; or
 - (iv) alternative accommodation is available for the tenant.

A *firm* may not rely during the fixed term of the tenancy on any circumstance to forfeit the lease and obtain possession of the property other than the circumstances permitted under this paragraph (4) to be included in the tenancy agreement, and a *firm* may only rely on any circumstance if it is fair for the *firm* to do so.

- (5) A *firm* must not take, or propose or threaten to take, any steps to evict the *SRB agreement seller* (or trust beneficiary or related person) other than by applying to the court for a possession order based on the grounds or circumstances, reliance on which is not prohibited by this *rule*, and enforcing that order in a lawful manner.
- (6) Where a *SRB agreement provider* enters into or proposes to enter into (whether before or after the commencement of the tenancy) a mortgage (or charge or standard security) over the interest it obtains under a *regulated sale and rent back agreement*, the *firm* must ensure that the mortgagee (or chargee or security holder) has agreed in writing to the proposed letting under the agreement, and to the terms of the agreement. The *firm* must provide to the *SRB agreement seller* a copy of the agreement in writing of the mortgagee (or chargee or security holder).

[**Note:** In England, Wales and Scotland a landlord, such as a *SRB agreement provider*, can only seek possession of a property during the fixed term of an assured tenancy if one or more of a limited number of grounds for possession set out in (in England and Wales) the Housing Act 1988, as amended, or (in Scotland) the Housing (Scotland) Act 1988, as amended, applies and the terms of the tenancy make provision for it to be ended on any of these grounds. Once the fixed term of the assured tenancy has ended, the landlord has the right to seek possession on broader grounds. Where the tenancy is (in England) an assured shorthold tenancy or (in Scotland) a short assured tenancy, the landlord has an additional right to seek possession from the end of the fixed term.

In Northern Ireland, the position is governed by the Private Tenancies (Northern Ireland) Order 2006 and the parties are free to agree the terms of a tenancy including its duration and the grounds on which the landlord may seek possession, including during any fixed term.

In any event it is for the court to decide whether one or more of the grounds for possession actually applies in the particular circumstances of any case.

In Northern Ireland, a tenant must give at least four weeks' notice to quit. Northern Ireland law implies a fixed term of six months in a private tenancy unless the parties agree an alternative fixed term, so a notice to quit expiring before the first six months of the tenancy may not be effective.]

2.6A.5C **G** In the light of ■ MCOB 2.6A.5BR (1)(c), and in accordance with *Principle 6*, a *firm* should not seek to prevent a tenant in Northern Ireland from ending the tenancy on less than the agreed notice period (not exceeding three months in accordance with ■ MCOB 2.6A.5BR (1)(c)), where the notice is given in the first six months of the tenancy.

2.6A.6 **G** *Firms* remain responsible for ensuring that their *customers'* interests are protected to a reasonable standard.

Protecting customers' interests: additional material for home purchase plans

2.6A.7 **G** A *home purchase provider* should consider obtaining confirmation from the *customer's* legal adviser that he has carried out, or will carry out, the steps that the *firm* expects the *customer* or his legal advisers to take to protect his interests at the time the plan is taken out.

Treating customers fairly: home purchase plans, home reversion plans and regulated sale and rent back agreements

2.6A.8 **R** A *firm* must pay due regard to the interests of its *customer* and treat him fairly when drafting, amending the terms of, or imposing obligations or exercising rights or discretions under, a *home purchase plan, home reversion plan or regulated sale and rent back agreement*.

2.6A.9 **G** A *firm* is unlikely, for example, to be treating its *customer* fairly in relation to termination of a *home purchase plan, home reversion plan or regulated sale and rent back agreement* if:

- (1) the grounds on which it may terminate all or part of a plan or agreement are unduly wide, or on which a *customer* may terminate are unduly narrow; or
- (2) the *customer* is not given appropriate notice of termination.

2.6A.10 **G** A *firm* is also unlikely to be treating its *customer* fairly if, upon termination of an agreement under a *home purchase plan, home reversion plan or regulated sale and rent back agreement*, the *customer* does not receive (net of any reasonable sums payable by the *customer*):

- (1) in the case of a *home reversion plan or regulated sale and rent back agreement* where the *customer* retains a beneficial interest in the property, the value of that beneficial interest; or
- (2) in the case of a *home purchase plan*, the value of purchase payments made.

[**Note:** The terms of a *home purchase plan, home reversion plan or regulated sale and rent back agreement* should take into account relevant legal obligations such as those under the *Unfair Terms Regulations* (for contracts entered into before 1 October 2015), the *CRA* and, where applicable, the *Housing Act 1988* (or, in Scotland, the *Housing (Scotland) Act 1988*). A *firm* may find material on the *FCA* website concerning the *FCA's* consumer protection powers useful.]

Treating customers fairly: home reversion plans and regulated sale and rent back agreements

2.6A.11 **G** A *firm* is unlikely, for example, to be treating a *reversion occupier or SRB agreement seller* fairly if:

- (1) the *reversion occupier or SRB agreement seller* is obliged to maintain the property to a standard which exceeds the standard that the

property is in when the *home reversion plan or regulated sale and rent back agreement* commences;

- (2) the *reversion occupier or SRB agreement seller* is not entitled to, or is not given, reasonable notice of an inspection, or the inspection is conducted in a way that is biased against him;
- (3) unreasonable restrictions are imposed on who may occupy the property, taking into account the potential needs of the *reversion occupier or SRB agreement seller* throughout the duration of the *home reversion plan or regulated sale and rent back agreement*;
- (4) unreasonable restrictions are imposed on the uses to which the property may be put;
- (5) the *reversion occupier or SRB agreement seller* is unreasonably treated as having abandoned the property. For example, it is likely to be unreasonable to treat a property as abandoned based only on a period of non-occupation;
- (5A) the rent payable under a *regulated sale and rent back agreement* is increased by an unreasonable amount or any charges payable under a *regulated sale and rent back agreement* are unreasonably imposed after the agreement is concluded; and
- (6) where the *reversion occupier* has a reasonable expectation that the *home reversion plan* can be transferred to another property, agreement to such a transfer is, or can be, refused unreasonably.

Independent valuation: home reversion plans and regulated sale and rent back agreements

2.6A.12 **R** A *firm* must ensure that any valuation is carried out by a competent valuer who is independent of the *reversion provider or SRB agreement provider*.

2.6A.12A **R** A *firm* must ensure that any valuation for the purposes of a *regulated sale and rent back agreement* is carried out by a valuer who owes a duty of care to the *customer* in valuing the property.

2.6A.13 **E**

- (1) A valuer may be considered competent if he is a suitably qualified member of a professional body.
- (2) A valuer may be considered independent if:
 - (a) the *customer* can choose the valuer subject to the *firm* objecting on reasonable grounds and to the valuer being competent;
 - (b) he owes a duty of care to the *customer* in valuing the property; and
 - (c) the *customer* has an appropriate remedy against him under a complaints procedure which allows the complaint to be referred to an independent person whose decision is binding on the valuer.

- (3) Compliance with (1) and (2) (except, in the case of a *regulated sale and rent back agreement*, (2)(b)) may be relied on as tending to establish compliance with ■ MCOB 2.6A.12 R.
- (4) [deleted]
- (5) For a *regulated sale and rent back agreement*, contravention of (1) or (2) (except (2)(b)) may be relied on as tending to show contravention of ■ MCOB 2.6A.12 R.

2.6A.13A G A *firm* may wish to use the form of joint instruction letter set out in ■ MCOB 2 Annex 1G with a view to establishing that a valuer owes a duty of care to the *customer* (see ■ MCOB 2.6A.12A R). That form incorporates the definition of "market value" required by ■ MCOB 6.9.2R (1)(b).

2.6A.14 G Members of the Royal Institution of Chartered Surveyors, for example, are required to operate a complaints procedure that allows the complaint to be referred to an independent person whose decision binds the valuer and which, in the *FCA's* view, provides a *customer* with an appropriate remedy.

Obtaining best price: partial home reversion plans or regulated sale and rent back agreements

2.6A.15 R A *firm* must take reasonable steps to ensure that, when a *home reversion plan* or *regulated sale and rent back agreement* ends and the *customer* retains a beneficial interest in the property:

- (1) the property is sold within a reasonable period of time; and
- (2) the best price that might reasonably be obtained is paid.

2.6A.16 G It is recognised that a balance has to be struck between the need to sell the property as soon as possible, and other factors, such as market conditions, which may prompt the delay of the sale. Legitimate reasons for deferring action might include the expiry of a period when a grant is repayable on re-sale, or the discovery of a title defect that needs to be remedied if the optimal selling price is to be achieved.

Arranging or administering for unauthorised providers: home reversion plans

2.6A.17 R For the purpose of this section (except this *rule*), a *reversion arranger* or *reversion administrator's customer*:

- (1) includes a *reversion occupier* or potential *reversion occupier* who enters, or proposes to enter, into a *home reversion plan* with an *unauthorised reversion provider* who is the *firm's customer*; and
- (2) excludes an *unauthorised reversion provider*.

Arranging or administering for unauthorised providers: regulated sale and rent back agreements

2.6A.17A **R** For the purpose of this section (except this *rule*), a *SRB arranger's* or *SRB administrator's* customer:

- (1) includes a *SRB agreement seller* or potential *SRB agreement seller* who enters, or proposes to enter, into a *regulated sale and rent back agreement* with an *unauthorised SRB agreement provider* who is the *firm's customer*; and
- (2) excludes an *unauthorised SRB agreement provider*.

Arranging or administering for unauthorised providers: home reversion plans and regulated sale and rent back agreements

2.6A.18 **G** A *person* may enter into a *home reversion plan* or *regulated sale and rent back agreement* as provider or agreement provider without being regulated by the *FCA* (or an *exempt person*) if the *person* does not do so by way of business (see *PERG* 14.5). If a *firm* arranges or makes arrangements for such a *person* to enter into a *home reversion plan* or *regulated sale and rent back agreement* as provider or agreement provider, the *firm* will be responsible for ensuring that the *reversion occupier's* or *SRB agreement seller's* interests are protected to a reasonable standard, even if the *reversion arranger* or *SRB arranger* is not acting for the *reversion occupier* or *SRB agreement seller*. A *reversion administrator* or *SRB administrator* is under the same obligation in relation to a *reversion occupier* or *SRB agreement seller* under a *home reversion plan* or *regulated sale and rent back agreement* which it administers on behalf of an *unauthorised reversion provider* or *unauthorised SRB agreement provider*.

2.7 Application to electronic media and distance communications

2.7.1 G ■ GEN 2.2.14 R (References to writing) has the effect that electronic media may be used to make communications that are required by the *Handbook* to be 'in writing' unless a contrary intention appears. In *MCOB*, the use of an electronic medium is restricted in certain circumstances to a *durable medium* as required by the *Distance Marketing Directive*.

Additional guidance in respect of electronic communication with or for customers

2.7.2 G For any electronic communication with a *customer* in relation to a *home finance transaction* a *firm* should:

- (1) have in place appropriate arrangements, including contingency plans, to ensure the secure transmission and receipt of the communication; it should also be able to verify the authenticity and integrity of the communication together with the date and time sent and received; the arrangements should be proportionate and take into account the different levels of risk in a *firm's* business;
- (2) be able to demonstrate that the *customer* wishes to communicate using this medium; and
- (3) if entering into an agreement, make it clear to the *customer* that a contractual relationship is created that has legal consequences.

2.7.3 G A *firm* should note that ■ GEN 2.2.14 R (References to writing) does not affect any other legal requirement that may apply in relation to the form or manner of *executing* a *document* or agreement.

General provisions related to distance contracts

2.7.4 R During the course of a *distance contract* with a *consumer*, the making or performance of which constitutes or is part of a *regulated mortgage contract*, *home purchase plan* or *regulated sale and rent back agreement*:

- (1) the *firm* must, at the *consumer's* request, provide a paper copy of the contractual terms and conditions of the *regulated mortgage contract*, *home purchase plan*, *regulated sale and rent back agreement* or services being provided by the *firm*; and
- (2) the *firm* must comply with the *customer's* request to change the means of distance communication used, unless this is incompatible

with the *regulated mortgage contract, home purchase plan, regulated sale and rent back agreement* or service being provided by the *firm*.

2.7.5

R

A *firm* must ensure that information provided to a *consumer* before the conclusion of a *distance contract* about his contractual obligations under that contract conform with the contractual obligations that would be imposed on him under the law applying if the contract were concluded.

Unsolicited services
.....

2.7.6

R

- (1) A *firm* must not:
 - (a) supply a service to a *consumer* without a prior request on his part, when this activity includes a request for immediate or deferred payment; or
 - (b) enforce any obligations against a *consumer* in the event of unsolicited supplies of services, the absence of a reply not constituting consent.
- (2) Paragraph (1) applies in relation to *mortgage mediation activities, entering into a regulated mortgage contract, home purchase mediation activities* or *entering into a home purchase plan* under an organised distance sales or service-provision scheme run by the *firm* or by an intermediary, who, for the purpose of that supply, makes exclusive use of one or more means of distance communication up to and including the time at which the services are supplied.

2.7A E-Commerce

Application

2.7A.1 **R** This section applies to a *firm* carrying on an *electronic commerce activity* from an *establishment* in the *United Kingdom*, with or for a person in the *United Kingdom* or another *EEA state*, in relation to a *home finance transaction*.

Information about the firm and its products or services

2.7A.2 **R** A *firm* must make at least the following information easily, directly and permanently accessible to the recipients of the *information society services* it provides:

- (1) its name;
- (2) the geographic address at which it is established;
- (3) the details of the *firm*, including its e-mail address, which allow it to be contacted rapidly and communicated with in a direct and effective manner;
- (4) an appropriate statutory status disclosure statement (■ GEN 4 Annex 1 R), together with a statement which explains that it is on the *Financial Services Register* and includes its Firm Reference Number;
- (5) if it is a *professional firm*, or a *person* regulated by the equivalent of a *designated professional body* in another *EEA State*:
 - (a) the name of the professional body (including any *designated professional body*) or similar institution with which it is registered;
 - (b) the professional title and the *EEA State* where the professional title was granted;
 - (c) a reference to the applicable professional rules in the *EEA State* of establishment and the means to access them; and
- (6) where the *firm* undertakes an activity that is subject to VAT, its VAT number.

[Note: article 5(1) of the *E-Commerce Directive*]

2.7A.3 **R** If a *firm* refers to price, it must do so clearly and unambiguously, indicating whether the price is inclusive of tax and delivery costs.

[Note: article 5(2) of the *E-Commerce Directive*]

2.7A.4 **R** A *firm* must ensure that commercial communications which are part of, or constitute, an *information society service*, comply with the following conditions:

- (1) the commercial communication must be clearly identifiable as such;
- (2) the *person* on whose behalf the commercial communication is made must be clearly identifiable;
- (3) promotional offers must be clearly identifiable as such, and the conditions that must be met to qualify for them must be easily accessible and presented clearly and unambiguously; and
- (4) promotional competitions or games must be clearly identifiable as such, and the conditions for participation must be easily accessible and presented clearly and unambiguously.

[Note: article 6 of the *E-Commerce Directive*]

2.7A.5 **R** An unsolicited commercial communication sent by e-mail by a *firm* established in the *United Kingdom* must be identifiable clearly and unambiguously as an unsolicited commercial communication as soon as it is received by the recipient.

[Note: article 7(1) of the *E-Commerce Directive*]

Requirements relating to the placing and receipt of orders

2.7A.6 **R** A *firm* must (except when otherwise agreed by parties who are not consumers):

- (1) give an *ECA recipient* at least the following information, clearly, comprehensibly and unambiguously, and before the order is placed by the recipient of the service:
 - (a) the different technical steps to follow to conclude the contract;
 - (b) whether or not the concluded contract will be filed by the *firm* and whether it will be accessible;
 - (c) the technical means for identifying and correcting input errors before the placing of the order; and
 - (d) the languages offered for the conclusion of the contract;
- (2) indicate any relevant codes of conduct to which it subscribes and information on how those codes can be consulted electronically;
- (3) (when an *ECA recipient* places an order through technological means), acknowledge the receipt of the recipient's order without undue delay and by electronic means (an order and an acknowledgement of receipt are deemed to be received when the parties to whom they are addressed are able to access them); and

(4) make available to an *ECA recipient*, appropriate, effective and accessible technical means allowing the recipient to identify and correct input errors before the placing of an order.

[**Note:** article 10(1) and (2) and 11(1) and (2) of the *E-Commerce Directive*]

2.7A.7

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Contractual terms and conditions provided by a *firm* to an *ECA recipient* must be made available in a way that allows the recipient to store and reproduce them.

[**Note:** article 10(3) of the *E-Commerce Directive*]

Exception: contract concluded by e-mail

2.7A.8

R

The requirements relating to the placing and receipt of orders do not apply to contracts concluded exclusively by exchange of e-mail or by equivalent individual communications.

[**Note:** article 10(4) and 11(3) of the *E-Commerce Directive*]



2.8 Record keeping

Purpose

- 2.8.1 **G** ■ MCOB 2.8 provides details of the standard expected of *firms* where there is an obligation in *MCOB* requiring *firms* to maintain adequate records to evidence compliance. An overall view of the record keeping requirements in *MCOB* is in ■ MCOB Sch 1.

Accessibility of records

- 2.8.2 **R** The records required in *MCOB* must be readily accessible for inspection by the *FCA*.
- 2.8.3 **G** A record would be 'readily accessible' if it were available for inspection within two *business days* of the request being received.
- 2.8.4 **G**
- (1) A *firm* may arrange for records to be kept in such form as it chooses, provided the record is readily accessible for inspection by the *FCA*.
 - (2) Where a *firm* chooses to maintain records in electronic form, it should take reasonable steps to ensure that:
 - (a) the electronic record accurately reflects the original information; and
 - (b) the electronic record has not been subject to unauthorised or accidental alteration.

- 2.8.5 **G** Except for ■ MCOB 11.6.21A R, each *rule* in *MCOB* that requires a record also sets out a period that the record must be kept for. While not a requirement of *MCOB*, *firms* may choose to keep records for longer periods, for example, where there is the possibility of *customer* complaint or legal action against the *firm*.

Home purchase plans

- 2.8.6 **G** This sourcebook does not specify detailed record keeping requirements for a *firm* that carries on a *home purchase activity* or that *communicates* or *approves a financial promotion* of a *home purchase plan* (but note the high-level record-keeping provisions in the Senior Management Arrangements, Systems and Controls sourcebook).

2.9 Restriction on marketing or providing an optional product for which a fee is payable

2.9.1

R

- (1) A *firm* must not enter into an agreement with a *customer* under which a charge is, or may become, payable for an optional additional product unless the *customer* has actively elected to obtain that specific product.
- (2) A *firm* must not impose a charge on a *customer* for an optional additional product under an agreement entered into on or after 1 April 2016 unless the *customer* actively elected to obtain that specific product before becoming bound to pay the charge.
- (3) A *firm* must not invite or induce a *customer* to obtain an optional additional product for which a charge will be, or may become, payable if the *firm* knows or has reasonable cause to suspect that:
 - (a) a contravention of (1) or (2) will take place with respect to the product; or
 - (b) the *person* supplying the optional additional product will act in a way that would contravene (1) or (2) if that *person* were a *firm*.
- (4) An omission by a *customer* is not to be regarded as an active election for the purposes of this *rule*.
- (5) It is immaterial for the purposes of (3) whether or not the *firm* would or might be a party to the agreement for the optional additional product.
- (6) A charge includes a financial consideration of any kind whether payable to the *firm* or to any other person.
- (7) An optional additional product is a good, service or right of any description (whether or not financial in nature) that a *customer* may obtain (or not, as the case may be) at his or her election in connection with or alongside entering into a *home finance transaction*.
- (8)
 - (a) Where a *customer* is required to obtain a specific additional product in order to enter into the *home finance transaction*, the product is not an optional additional product.
 - (b) Where a *customer* is required to obtain a particular category of additional product (for example, a particular type of insurance) in order to enter into the *home finance transaction*, and the

customer is given a choice as to the seller or supplier from whom to obtain the product or which specific product to obtain, the product is an optional additional product.

(9) It is immaterial for the purposes of (7) and (8) whether the optional additional product is obtained from the *firm* or from another *person*.

(10) (a) If, under the terms and conditions of an optional additional product, there is to be an automatic renewal of the agreement on substantially the same terms, it suffices for the purposes of (1) to (3) if the *customer* actively elected before entering into the initial agreement or a preceding renewal to obtain the product.

(b) An automatic renewal of the agreement is not to be regarded as being on substantially the same terms if, following the renewal, a charge will or may become payable for the optional additional product for the first time (in which case, (1) to (3) apply at the time of the renewal).

(c) Except as set out in (b), changes in the level of charges for an optional additional product are to be disregarded in determining whether an automatic renewal of an agreement is on substantially the same terms.

(11) A *customer* may make an active election for the purposes of this *rule* through an intermediary in the sales process or through a *person* acting on behalf of the *firm*.

2.9.2 **G** An example of an omission by a *customer* which is not to be regarded as an active election is the failure by the *customer* to change a default option such as a pre-ticked box on a website.

2.9.3 **G** *Firms* are reminded that a similar prohibition on opt-out selling of add-on products is imposed by The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 in relation to optional additional agreements where the main sale is not a financial service or product.

2.9.4 **G** *Firms* are reminded of the guidance on appointed representatives set out in **■** MCOB 1.5G.

Form of joint instruction letter

This Annex belongs to ■ MCOB 2.6A.13A G. MCOB 2 Annex 1G - Form of joint instruction letter.

