

Chapter 4

Advising and selling standards



4.10 Home purchase plans: sales standards

Scope of service provided

4.10.1 **R** [deleted]

Initial disclosure requirements

4.10.2 **R** [deleted]

4.10.3 **G** [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 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** [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 4.10.5A R** to **■ MCOB 4.10.9A R**.
- 4.10.5D** **R** For the purposes of **■ MCOB 4.10.5A R**:
- (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** [deleted]
- 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** *Firms* may wish to consider the following provisions:
- (1) the *rule* at **■ MCOB 4.7A.6 R** 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.21 G** and **■ MCOB 4.7A.23 G** (Other considerations when advising);
in each case using *home purchase plan* terminology instead of the equivalent *regulated mortgage contract* terminology, where appropriate.

4.10.8 **R** [deleted]

4.10.9 **G** [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.14 R (as applied in relation to *home purchase plans* by ■ MCOB 4.10.9B R and modified for *home purchase plans* by ■ MCOB 4.10.9D R) 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 4.10.9D R.

4.10.9C **G** As provided in ■ MCOB 4.1.2B R, ■ 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.

4.10.9D **R** 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

4.10.10 **R** A *firm* must, before *advising* a *customer* 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.

4.10.11 **R** A risks and features statement need not be personalised to the *customer's* circumstances but must:

- (1) include the Key facts logo in a prominent position at the top of the statement;
- (2) state that the *FCA* requires a *firm* to provide the statement;
- (3) state that mortgages are available and that the *customer* should think carefully about the product appropriate to his needs;

- (4) describe the significant features of the plan, including:
 - (a) how the *home purchase plan* works;
 - (b) the nature of the *customer's* commitment;
 - (c) when and how a *customer's* commitment is reviewed;
 - (d) any significant restrictions of the plan; and
 - (e) the charges that a *customer* may incur under the plan, including the reason for, and amount of, each charge, when they are payable, whether they will be reimbursed and, if so, when;
- (5) describe the risks associated with the plan, including:
 - (a) the risks to the *customer* if he fails to keep up repayments and the circumstances in which this might occur; and
 - (b) risks to the *customer* of the *home purchase provider failing* or disposing of any of its obligations or rights (including its interest in the property) to a third party (taking into account steps that will be taken by the *home purchase provider* to mitigate such risks); and
- (6) state the importance of obtaining independent legal advice.

4.10.12 R A *firm* may omit details of the charges that a *customer* may incur under a *home purchase plan* from the risks and features statement if they are included in a separate *tariff of charges* provided to the *customer* at the same time.

Record keeping.....

4.10.13 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 4.10.5D R;
- (b) that explains why the *firm* has concluded that any advice given to a *customer* complies with ■ MCOB 4.10.5A R 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.

4.10.14 G *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 4.10.9B R.