

## Chapter 4

# Advising and selling standards

## 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;
- (2) the basis on which the *firm* will be remunerated; and
- (3) the availability of alternative finance options.

### Range of products

**4.4A.2** **R** (1) The limitations in **■** MCOB 4.4A.1 R 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.3A** **G** In making its disclosure under **■ MCOB 4.4A.1R(1)**, a *firm* should indicate, for each relevant market, whether this is across *first charge legal mortgages, second charge regulated mortgage contracts* or both.
- 4.4A.4** **R**
- (1) If a *firm* is not offering to the customer products from an unlimited range from across the relevant market, in its disclosure on product range in **■ MCOB 4.4A.1 R**, the *firm* must:
    - (a) where it is an *MCD mortgage credit intermediary*, list the names of all the *mortgage lenders* whose products it is offering; or
    - (b) where it is not an *MCD mortgage credit intermediary*, either
      - (i) comply with (a); or
      - (ii) 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)(b)(ii), 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.
  - (3) An *MCD mortgage credit intermediary* must only disclose that it is independent if its consideration of *MCD regulated mortgage contracts* across the market is unlimited.
- [Note: articles 15(1)(c) and 22(4) of the *MCD*]
- 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)]."

4.4A.7

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- “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.”

- (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 3A.2.1R (Fair, clear 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 ■ MCOB 4.10.3B R and ■ MCOB 8.3.2B R.

**Basis of remuneration**

4.4A.8

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- (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 the *mortgage lender* or another third party and, if applicable, whether any commission will be offset against any fees charged and the arrangements for doing so; and

[Note: article 15(3) of the *MCD*]

  - (d) for an *MCD regulated mortgage contract*, the amount of commissions or other inducements, or where the amount is not known at the time of disclosure, notification that the actual amount will be disclosed at a later stage in the *ESIS*.

[Note: article 15(1)(g) of the *MCD*]
- (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.
- (e) for an *MCD regulated mortgage contract*, if the *firm* will charge a fee calculated other than in line with 2(a) to (d), the *firm* must provide details of the method for calculating the fee.

[Note: article 15(1)(e) of the *MCD*]

**Alternative finance options**

**4.4A.8A R**

Where a *customer* is looking to increase the borrowing secured on a property which is the subject of an existing *regulated mortgage contract*, the *firm* must first inform the *customer*, either orally or in writing, that the following alternative finance options may be available and more appropriate for the *customer*:

- (1) a further advance from the existing lender, unless the *firm* knows that the existing lender will not make a further advance to the *customer*;
- (2) (a) a *second charge regulated mortgage contract*, where the *firm* would offer services in relation to a new *first charge regulated mortgage contract*;
- (b) a new *first charge regulated mortgage contract*, where the *firm* would offer services in relation to a *second charge regulated mortgage contract*; or
- (3) *unsecured lending*.

**4.4A.8AA R**

Where a *customer* is looking to take out a *retirement interest-only mortgage*, the *firm* must inform the *customer*, either orally or in writing, that a *lifetime mortgage* may be available and more appropriate for the *customer*.

4.4A.8B

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Firms are not obliged to explore whether one of the alternative finance options mentioned in ■ MCOB 4.4A.8AR or ■ MCOB 4.4A.8AAR is more appropriate for the *customer* where that is not the service offered to the *customer*.

### Method of providing initial disclosure in all cases

4.4A.9

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The information required by ■ MCOB 4.4A.1 R, ■ MCOB 4.4A.2 R, ■ MCOB 4.4A.4R (1), ■ MCOB 4.4A.8 R and ■ MCOB 4.4A.8A R must be communicated clearly and prominently, and in doing so:

- (1) an *MCD mortgage adviser*, or any other *firm* that is an *MCD mortgage lender* or an *MCD mortgage arranger* that provides advisory services within the meaning of article 4(21) of the *MCD*, must provide the information in ■ MCOB 4.4A.1R(1) and (2) and ■ MCOB 4.4A.8R(1)(a) and (2)(e) in a *durable medium*;
  - (a) [deleted]
  - (b) [deleted]
- (1A) an *MCD mortgage arranger* (unless it is also acting as an *MCD mortgage lender* and carrying out a direct sale of the proposed *regulated mortgage contract*) must provide the information in ■ MCOB 4.4A.1R(1) and (2), ■ MCOB 4.4A.4R(1)(a) and (3), and ■ MCOB 4.4A.8R(1)(a), (c), (d) and (2) in a *durable medium*; and
- (2) in all other cases:
  - (a) if the *initial contact* includes spoken interaction, the information must be communicated orally; and
  - (b) 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*.

[Note: article 15(1) and article 22(2) of the *MCD*]

4.4A.10

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- (1) In order to comply with ■ MCOB 4.4A.9R(1) and (1A), the required information must be provided in a *durable medium* for all sales.
- (1A) In order to comply with ■ MCOB 4.4A.9R(2):
  - (a) 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;
  - (b) in a postal sale, a *firm* may comply by setting out the information in a clear covering letter;
  - (c) where the *initial contact* is by email, SMS or instant messaging, the information could be displayed clearly and prominently early on in the body of the email, SMS or instant messaging; and

(d) for face-to-face and telephone contact, a *firm* should comply by building the information into the initial oral discussion with the *customer*.

(2) [deleted]

(3) [deleted]

(4) [deleted]

**4.4A.11** **G** A *firm* may demonstrate compliance with ■ MCOB 4.4A.9R(2) 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.1 R, ■ MCOB 4.4A.2 R, ■ MCOB 4.4A.4R(1) and (3), ■ MCOB 4.4A.8 R and ■ MCOB 4.4A.8A R must be provided:

(1) in the case of information required by ■ MCOB 4.4A.1R (1) and ■ MCOB 4.4A.1R (2), ■ MCOB 4.4A.4R (1)(a) and ■ (3), and ■ MCOB 4.4A.8R (1)(a), ■ (c), ■ (d) and ■ (2), where the *firm* is an *MCD credit intermediary*, in good time before carrying out any *MCD credit intermediation activity*;

(1A) in the case of information required by ■ MCOB 4.4A.1R(1) and (2) and ■ MCOB 4.4A.8R(1)(a) and (2)(e), where the *firm* is an *MCD mortgage adviser*, or any other *firm* that is an *MCD mortgage lender* or an *MCD mortgage arranger* that provides advisory services within the meaning of article 4(21) of the *MCD*, before the provision of such advisory services or, where applicable, the conclusion of a contract for the provision of such advisory services; and

(2) in all other cases, during the course of the *initial contact*.

[Note: article 15(1) and article 22(2) of the *MCD*]

**4.4A.13** **G** (1) In many cases, ■ MCOB 4.4A.12 R 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.12 R 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 4.5.3 G (1)).

**4.4A.14** **G** *Principle 7* and MCOB 3A.2.1R 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.1 R, ■ MCOB 4.4A.2 R, ■ MCOB 4.4A.4R (1) and ■ MCOB 4.4A.8 R 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.15 R 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 2.5.4 R (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.1 R to ■ MCOB 4.4A.8A R;
- (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 *Financial Services Register* and its FCA 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.18 R 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 1.3.5 G and ■ MCOB 1.3.6 G.

**4.4A.20** G

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**4.4A.20A** G

- (1) An *MCD mortgage lender* or an *MCD credit intermediary* may comply with ■ MCOB 4.4A.18R (3) and ■ (5) to ■ MCOB 4.4A.18R (9) by providing an *ESIS* to the *consumer* prior to the conclusion of the *MCD regulated mortgage contract*.
- (2) Provided that the provisions of ■ MCOB 4.4A on the methods and timing of disclosure are complied with, an *MCD mortgage lender* or an *MCD credit intermediary* may comply with ■ MCOB 4.4A.18R (1), ■ (2) and ■ MCOB 4.4A.18R (4) by providing the necessary information in a separate document, which may be annexed to the *ESIS* (■ MCOB 5A.6.1 R).

**Uncertainty whether a mortgage is regulated**

4.4A.21

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- (1) If at the point that initial disclosure must be made in accordance with ■ MCOB 4.4A.1 R, ■ MCOB 4.4A.2 R, ■ MCOB 4.4A.4 R, ■ MCOB 4.4A.8 R and ■ MCOB 4.4A.8A R 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

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*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.