

**MORTGAGES: CONDUCT OF BUSINESS SOURCEBOOK
(AMENDMENT NO 2) INSTRUMENT 2004**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers listed in Schedule 4 to the Mortgages: Conduct of Business sourcebook.
- B. The rule-making powers listed in that Schedule are specified for the purpose of section 153(2) (Rule-making instruments) of the Financial Services and Markets Act 2000.

Commencement

- C. This instrument comes into force on 31 October 2004.

Amendments to the Mortgages: Conduct of Business sourcebook

- D. The Mortgages: Conduct of Business sourcebook is amended in accordance with the Annex to this instrument.

Citation

- E. This instrument may be cited as the Mortgages: Conduct of Business Sourcebook (Amendment No 2) Instrument 2004.

By order of the Board
16 September 2004

Annex

Amendments to the Mortgages: Conduct of Business sourcebook

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

MCOB Transitional Provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
6	<i>MCOB 3.6</i>	R	<p>(1) Providing it does not state or imply that protections under the Consumer Credit Act 1974 apply, a <i>non-real time qualifying credit promotion</i> communicated:</p> <p>(a) in a directory (or similar publication) that is updated annually;</p> <p>(b) otherwise than in (a);</p> <p>on or after 31 October 2004 that was first communicated <u>where the deadline for submission for communication was</u> before that date will be in compliance with the rules in <i>MCOB 3.6</i> if it satisfies the</p>	<p>(1)(a) From <u>the later of 31 October 2004 or the date of first communication</u>, for one year;</p> <p>(1)(b) From 31 October 2004 until 31 January 2005.</p>	31 October 2004

			advertising requirements under the Consumer Credit Act 1974. ...		
...					
<u>8</u>		<u>R</u>	<p>A reference to:</p> <p>(a) <u>an initial disclosure document in MCOB 4 Ann 1R or MCOB 8 Ann 1R; or</u></p> <p>(b) <u>an illustration in MCOB 5 Ann 1R or MCOB 9 Ann 1R;</u></p> <p><u>includes an initial disclosure document or illustration which complies with the rules in the Mortgages: Conduct of Business Sourcebook Instrument 2003, as amended by the Mortgages: Conduct of Business Sourcebook (Amendment) Instrument 2004.</u></p>	<p><u>From 31 October 2004 until 31 May 2005</u></p>	<p><u>31 October 2004</u></p>

...

2.2.3R In any communication to a *customer*, a *firm* must:

...

- (3) describe any *regulated lifetime mortgage contract* as a 'lifetime mortgage' and not use any other expression to describe such a mortgage ~~or omit that description from the name given to any product that meets the definition.~~

...

2.2.5G *Firms* are reminded that they should follow the relevant ~~rules~~ rules in COB 5 and COB 6 relating to advice and disclosure on *investments* if they are *advising the customer on an investment (such as an ISA) such as an annuity linked to a regulated lifetime mortgage contract or an ISA used as a repayment vehicle.*

...

- 2.3.6R (1) *A firm* must not operate a system of giving or offering inducements to a *mortgage intermediary* or any other third party whereby the value of the inducement increases if the *mortgage 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.

...

2.7.5R *A firm* must ensure that information provided to a *retail customer* 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

- 2.7.6R (1) *A firm* must not:
- (a) supply a service to a *retail customer* 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 *retail customer* in the event of unsolicited supplies of services, the absence of a reply not constituting consent.
- (2) Paragraph (1) applies in relation to *advising on, arranging or entering into a regulated mortgage contract* 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.

...

3.6.9R A *non-real time qualifying credit promotion* must:

- (1) describe any *early repayment charge* as an 'early repayment charge' and not use any other expression to describe such charges;
- (2) describe any *higher lending charge* as a 'higher lending charge' and not use any other expression to describe such charges; ~~and~~
- (3) not contain the 'key facts' logo unless it is required by a *rule*; and
- (4) describe any *regulated lifetime mortgage contract* as a 'lifetime mortgage' and not use any other expression to describe such a mortgage.

...

4.1.2R Table: This table belongs to *MCOB 4.1.1R*

(1) Category of firm	(2) Applicable section
<i>mortgage lender</i> ...	whole chapter except <i>MCOB 4.56</i> and <i>MCOB 4.67</i>

...

4.1.5R In relation to a *regulated lifetime mortgage contract* or a home reversion scheme, this chapter *MCOB 4* is ~~replaced~~ modified by *MCOB 8* (Lifetime mortgages: advising and selling standards).

...

4.4.7R ...

- (2) Provided that the telephone call in (1) has not led the *firm* to conclude that the *customer* is ineligible for any of its *regulated mortgage contracts*, and that the *customer* has provided his contact details, the *firm* must send the *customer* a copy of the initial disclosure document required by *MCOB 4.4.1R*(~~4~~) in the form set out in *MCOB 4 Ann 1R* or *MCOB 4 Ann 2R* and any other information required to be provided, in a *durable medium* within five *business days* of the telephone call (see also *MCOB 4.5.2R*(2)(b) for the equivalent requirement in relation to *distance mortgage mediation contracts*).

...

4.5.2R If the initial contact of a kind in *MCOB 4.4.1R(1)* is with a *retail customer* with a view to concluding a *distance mortgage mediation contract*, a *firm* must:

...

(2) Exemption: telephone sales

(a) This exemption applies if the service is being provided on the telephone and the *customer* wishes to enter into a contract with the *firm*. Provided Subject to the customer gives giving his explicit consent to receiving only limited disclosure information, the firm must, prior to the conclusion of the contract on the telephone, may proceed provide the customer with on the basis of at least the following information in addition to the information in *MCOB 4.4.7R(1)*:

...

(aa) If the customer does not give his explicit consent to receiving limited information, and the parties wish to proceed by telephone, the firm must, prior to the conclusion of the contract, provide orally to the customer all of the information required by (1).

(b) Where (a) or (aa) applies, the *firm* must send the *retail customer* without delay and, at the latest immediately after a contract is concluded, the information in *MCOB 4 Ann 3R* and any other information required to be provided in accordance with *MCOB 4* required by (1), in a *durable medium*.

...

~~Unsolicited services~~

4.5.4R Subject to *MCOB 4.5.5R*, a *firm* must not:

(1) ~~advise on, arrange, or enter into, a distance mortgage mediation contract with a retail customer, without a prior request on his part, when the supply of such service includes a request for immediate or deferred payment; or~~

(2) ~~enforce any obligation against a retail customer in the event of unsolicited supplies of such services, the absence of a reply not constituting consent.~~

4.5.5R ~~*MCOB 4.5.4R* does not apply for a tacit renewal of a distance contract.~~

...

4.9.1AG Firms are reminded that in accordance with MCOB 1.2.3R, they should either comply in full with MCOB or comply with all tailored provisions in MCOB that relate to business loans. Therefore, a firm may only follow the tailored provisions in MCOB 4.9 if it also follows all other tailored provisions in MCOB.

...

4 Ann 1R

Initial disclosure document ("IDD")

R

1 Table:

This Annex belongs to ~~MCOB~~ MCOB 4.4.1R(1)

...

7 What to do if you have a complaint [Note 18]

...

If you cannot settle your complaint with us, you may be entitled to refer it to the Financial Ombudsman Service. [Note 22A]

8 Are we covered by the Financial Services Compensation Scheme (FSCS)? [Note 18] [Note 23] [Note 24]

...

The following notes do not form part of the IDD

...

Note 9 - this sentence is required only where a firm selects this service option. It may also be omitted if a the firm chooses to list all of the lenders it offers mortgages from instead of the text "a limited number of lenders", in the previous line, so long as the firm offers all of the mortgages generally available from each lender.

...

Note 12 – if the *firm* receives commission instead of, or in addition to, *fees* from the *customer*, it must insert a plain language explanation of this (see specimen for a plain

language example). If the *firm* will pay over to the *customer* any commission the *firm* receives, it may refer to that fact here.

...

Note 14 - if, in section 4, it has been indicated that there will be 'No fee' or that any *fee* will be payable only if the mortgage completes, section 5 may be omitted altogether, and the following sections re-numbered accordingly.

...

Note 21 – insert a short, plain language description of the business for which the *firm* has *permission* in relation to *regulated mortgage contracts*.

...

Note 22A – if the IDD is provided by an authorised professional firm which is exclusively carrying on non-mainstream regulated activities, the authorised professional firm should delete this sentence and refer to the alternative complaints handling arrangements.

...

Note 24 - when a *firm* which is not a *participant firm* provides the IDD, it must answer this question 'No' and should state the amount of cover provided (if any) and from whom further information about the compensation arrangements may be obtained.

...

5.1.3R ...

- (2) In relation to further advances and other variations, MCOB 5 is modified by MCOB 7 (Disclosure at start of contract and after sale) ~~applies in place of MCOB 5~~, regardless of whether they are variations to an existing *regulated mortgage contract*, or are such that they involve the *customer* entering into a new *regulated mortgage contract*.
- (3) In relation to a *regulated lifetime mortgage contract*, MCOB 5 is modified by MCOB 9 (Lifetime mortgages: product disclosure) ~~applies in place of MCOB 5~~.

...

5.6.18R ...

- (3) If the amount on which the *illustration* is based includes the amount that the *customer* wants to borrow plus insurance premiums or insurance-related charges (other than a *higher lending charge* ~~or where the premium is repaid over a term of 12 months or less and no interest is charged on the premium~~) that have been added to the loan:
 - (a) except where (b) applies, this section must include the following text... "plus £[insert amount of premium or charges, or both, to

be added to the loan] for insurance [premiums] [and] [charges] that will be added to the loan – see Section 9 for details."; or

(b) where there are other insurance premiums or insurance-related charges, or both, that the *customer* must pay that have not been added to the loan, this section must include the following text ...: "plus £[insert amount of premium or charges, or both, to be added to the loan] for insurance [premiums] [and] [charges] that will be added to the loan. These and any additional insurance [premiums] [and] [charges] that you need to pay are shown in Section 9."

(4) If the amount on which the *illustration* is based..., Section 3 of the *illustration* must include the following text after the loan amount from *MCOB* 5.6.6R(2): "No fees have been added to this amount but the fees you need to pay are shown in Section 8. For details of any insurance charges, see Section 9."

(5) If the *regulated mortgage contract* on which the *illustration* is based has no charges or payments that must be paid by the *customer* (~~that is, there are no fees to pay in Section 8~~), and no insurance premiums are being added to the loan, ...

...

5.6.42R Section 6 of the *illustration* must contain the following information:

...

(2) the assumed start date that has been used in the *illustration* to estimate the number of payments to be charged at given interest rates ~~must be stated using the following text: "This illustration assumes that the mortgage will start on [insert assumed start date]."~~;

...

5.6.65R The following text must be included at the end of Section 7 'Are you comfortable with the risks?': "The FSA's information sheet 'You can afford your mortgage now, but what if...?' will help you consider the risks. You can get a free copy from www.fsa.gov.uk/consumer, or by calling 0845 ~~606 1234~~ 456 1555."

...

5.6.70R ...

(2) If the *customer* has asked for any fees to be added to the loan, this ~~should~~ must be stated alongside each fee.

...

5.6.82R ...

(2) If the ~~customer~~ *customer* has asked to add any insurance premiums or insurance-related charges to the amount borrowed in accordance with *MCOB 5.6.18R(3)*, the *illustration* must state that this is the case.:

(a) ~~the insurance premiums must be included in Section 3; and~~

(b) ~~the following text must be used in Section 9:~~

~~"The annual insurance premium will be added to your mortgage account and increase the amount you owe. You can pay this premium in full by [insert details of the period of time that the *customer* will have to pay the premium in full before interest is charged on the insurance premium e.g. 'by the end of the month in which the *regulated mortgage contract* starts'] at no extra cost, otherwise interest will be charged at [insert details of the applicable interest rate e.g. 'the same rate as your mortgage' or 'the standard variable rate which is currently x%']."~~

...

5.6.129R If the *regulated mortgage contract* is a *shared appreciation mortgage*, *MCOB 5.6* applies to the *illustration* with the following amendments:

(1) Section 4 'Description of this mortgage' must contain the following additional information and text in this order after the details required by *MCOB 5.6.25R* to *MCOB 5.6.29R*:

...

(f) include this text after the cash examples in (c) (or, if applicable, after the cash examples in (d) or (e)): "This is not an indication of how the actual value of your property may change.";

...

...

5.6.145R The following text must be included at the end of Section 7 'Are you comfortable with the risks?': "The FSA's information sheet 'You can afford your mortgage now, but what if...?' will help you consider the risks. You can get a free copy from www.fsa.gov.uk/consumer, or by calling 0845 ~~606 1234~~ 456 1555."

...

5.7.1AG *Firms* are reminded that, in accordance with *MCOB 1.2.3R*, they should either comply in full with *MCOB* or comply with all tailored provisions in *MCOB*

that relate to business loans. Therefore, a *firm* may only follow the tailored provisions in *MCOB* 5.7 if it also follows all other tailored provisions in *MCOB*.

...

5 Ann 1R

The illustration: table of contents, prescribed text and prescribed section headings and subheadings.

...

13. Using a mortgage intermediary

...

[...] Where can you get more information about mortgages?
The FSA publishes useful guides on choosing a mortgage. These are available free through its website www.fsa.gov.uk/consumer or by calling 0845 606 1234 <u>456 1555</u> . The website also provides Comparative Tables to help you shop around.

...

6.1.4R In relation to a *regulated lifetime mortgage contract*, this chapter, *MCOB* 6, is ~~replaced~~ modified by *MCOB* 9 (Lifetime mortgages; – product disclosure).

...

6.7.1AG *Firms* are reminded that in accordance with *MCOB* 1.2.3R, they should either comply in full with *MCOB* or comply with all tailored provisions in *MCOB* that relate to business loans. Therefore, a *firm* may only follow the tailored provisions in *MCOB* 6.7 if it also follows all other tailored provisions in *MCOB*.

...

7.1.8R In relation to a *regulated lifetime mortgage contract*, this chapter *MCOB* 7 is ~~replaced~~ modified by *MCOB* 9 (Lifetime mortgages; – product disclosure).

...

7.2.1G ...

(2) Where a *firm* provides services to a *customer* in relation to a further advance, rate switch, or addition or removal of a party to the variation ~~of~~ a *regulated mortgage contract*, this chapter also requires that the

customer is provided with an *illustration* to make clear the price and features associated with that variation.

...

7.7.1AG *Firms* are reminded that in accordance with *MCOB* 1.2.3R, they should either comply in full with *MCOB* or comply with all tailored provisions in *MCOB* that relate to business loans. Therefore, a *firm* may only follow the tailored provisions in *MCOB* 7.7 if it also follows all other tailored provisions in *MCOB*.

8.3.3R Table Table of modified cross-references to other rules:

...

Subject	Rule or guidance	Reference in rule or guidance	To be read as a reference to:
...			
Initial disclosure requirements	<i>MCOB</i> 4.4.3G	<i>MCOB</i> 4	<i>MCOB</i> 4 as modified by <i>MCOB</i> 8
<u>Initial disclosure requirements where initial contact is by telephone (for regulated lifetime mortgage contracts only)</u>	<u><i>MCOB</i> 4.4.7R(2)</u>	<u><i>MCOB</i> 4 Ann 1R</u>	<u><i>MCOB</i> 8 Ann 1R</u>
Additional disclosure for distance mortgage mediation contracts	<i>MCOB</i> 4.5	<u><i>MCOB</i> 4</u>	<u><i>MCOB</i> 4 as modified by <i>MCOB</i> 8</u>
...			

8 Ann 1R

Initial disclosure document ("IDD")

R

1 Table:

This annex belongs to *MCOB* 4.4.1R (as modified by *MCOB* 8) and *MCOB* 8.4.1R.

...

7 What to do if you have a complaint [Note 19]

...

If you cannot settle your complaint with us, you may be entitled to refer it to the Financial Ombudsman Service. [The Financial Ombudsman Service does not consider complaints about home reversion schemes]. [Note 3] [Note 23A]

8 Are we covered by the Financial Services Compensation Scheme (FSCS)? [Note 19] [Note 24] [Note 25]

...

The following notes do not form part of the IDD.

...

Note 10 - this sentence is required only where a *firm* selects this service option. It may also be omitted if a ~~the~~ *firm* chooses to list all of the companies it offers products from instead of the text "a limited number of companies", in the previous line, so long as the *firm* offers all of the products generally available from each company.

...

Note 13 – if the *firm* receives commission instead of, or in addition to, *fees* from the *customer*, it must insert a plain language explanation of this (see specimen for a plain language example). If the *firm* will pay over to the *customer* any commission the *firm* receives, it may refer to that fact here.

...

Note 15 - if, in section 4, it has been indicated that there will be 'No fee' or that any *fee* will be payable only if the product completes, section 5 may be omitted altogether, and the following sections re-numbered accordingly.

...

Note 22 – insert a short, plain language description of the business for which the *firm* has *permission* in relation to *regulated lifetime mortgage contracts*.

...

Note 23A – if the IDD is provided by an *authorised professional firm* which is exclusively carrying on non-mainstream regulated activities, the *authorised professional firm* should delete this sentence and refer to the alternative complaints handling arrangements. It should also omit the information required under Note 3.

...

Note 25 - when a *firm* which is not a *participant firm* provides the IDD, it must answer this question 'No' and should state the amount of cover provided (if any) and from whom further information about the compensation arrangements may be obtained. It should also omit the information required under Note 3.

...

- 9.4.10R (1) In estimating a term under MCOB 9.4.6R(5) a *firm* must:
- (a) use the following mortality table: ~~the PA92 (male or female as appropriate) pensioners' 1991-94 table amounts, projected forward to 2010 from the Continuous Mortality Investigation Reports 16 and 17, PMA92(C=2010) and PFA92(C=2010) for males and females respectively, derivable from the Continuous Mortality Investigation Report 17 published by the Institute of Actuaries and the Faculty of Actuaries in 1998 and 1999 respectively; and~~

...

- 9.4.21R ...
- (4) If the amount on which the *illustration* is based includes the amount that the *customer* wants to borrow plus insurance premiums or insurance-related charges (other than a *higher lending charge* ~~or where the premium is repaid over a term of 12 months or less and no interest is charged on the premium~~) that have been added to the loan or amount to be drawn down:
 - (a) except where (b) applies, this section must include the following text... "plus £[insert amount of premium or charges, or both, to be added to the loan] for insurance [premiums] [and] [charges] that will be added to the loan [or amount drawn down] – see Section 12 for details."; or
 - (b) where there are other insurance premiums or insurance-related charges, or both, that the *customer* must pay that have not been added to the loan, this section must include the following text ... "plus £[insert amount of premium or charges, or both, to be added to the loan] for insurance [premiums] [and] [charges] that will be added to the loan [or amount drawn down]. These and

any additional insurance [premiums] [and] [charges] that you need to pay are shown in Section 12."

- (5) If the amount on which the *illustration* is based ..., Section 4 of the *illustration* must include the following text after the loan amount from *MCOB* 9.4.13R(1): "No fees have been added to this amount but the fees you need to pay are shown in Section 11. For details of any insurance charges, see Section 12.".
- (6) If the *regulated lifetime mortgage contract* on which the *illustration* is based has no charges ~~or payments~~ that must be paid by the *customer* (~~that is there are no fees to pay in Section 11~~), and no insurance premiums are being added to the loan, ...

...

9.4.39R Section 8 of the *illustration* must contain the following information:

...

- (2) the assumed start date that has been used in the *illustration* to estimate the number of payments to be charged at given interest rates ~~must be stated using the following text: "This illustration assumes that the lifetime mortgage will start on [insert assumed start date]."~~;

...

...

9.4.51R The table showing the projection in the section headed "Projection of roll-up of interest" should show annual details in columns under the following headings:

...

- (4) "Interest charged at [insert percentage(s)] ~~per year~~": this must be the interest charge for the year in question, ...

...

...

9.4.69R ...

- (2) If the *customer* has asked for any fees to be added to the loan ~~amount~~, this ~~should~~ must be stated alongside each fee.

9.4.81R ...

(2) If the *customer* has asked to add any insurance premiums or insurance-related charges to the amount borrowed in accordance with *MCOB* 9.4.21R(4), the *illustration* must state that this is the case.:

(a) ~~the insurance premium(s) must be included in Section 4; and~~

(b) ~~the following text must be used in Section 12:~~

~~"The annual insurance premium will be added to your lifetime mortgage account and increase the amount you owe. You can pay this premium in full by [insert details of the period of time that the *customer* will have to pay the premium in full before interest is charged on the insurance premium e.g. 'by the end of the month in which the lifetime mortgage starts'] at no extra cost, otherwise interest will be charged at [insert details of the applicable interest rate e.g. 'the same rate as your lifetime mortgage' or 'the standard variable rate which is currently x%']."~~

...

9.4.130R If the *regulated lifetime mortgage contract* is a *shared appreciation mortgage*, *MCOB* 9.4 applies to the *illustration* with the following modifications:

(1) Section 5 'Description of this mortgage' must contain the following additional information and text in this order after the details required by *MCOB* 9.4.24R to *MCOB* 9.4.29R:

...

(f) include this text after the cash examples in (c) (or, if applicable, after the cash examples in (d) or (e)): 'This is not an indication of how the actual value of your home may change.'

...

...

9 Ann 1R

The illustration: table of contents, prescribed text and prescribed section headings and subheadings.

...

1. About this information

...

The FSA provides useful information on lifetime mortgages and other ways of releasing

equity from your home in a booklet called 'Raising money from your home'. You can get this free through the FSA website www.fsa.gov.uk/consumer or by calling 0845 606 1234 456 1555.

...

12.3.4R Before:

...

- (3) changing all or part of a *regulated mortgage contract* from one ~~type of~~ interest rate to another; ...

...

12.6.2G *Firms* are also reminded that in accordance with *MCOB* 1.2.3R, they should either comply in full with *MCOB* or comply with all tailored provisions in *MCOB* that relate to business loans.

...

13.7.2G *Firms* are reminded that in accordance with *MCOB* 1.2.3R, they should either comply in full with *MCOB* or comply with all tailored provisions in *MCOB* that relate to business loans. Therefore, a *firm* may only follow the tailored provisions in *MCOB* 13.7, if it also follows all other tailored provisions in *MCOB*.