Mortgages and Home Finance: Conduct of Business Sourcebook

Chapter 2

Conduct of business standards: general

Communications 2.2

Purpose

2.2.1

The purpose of ■ MCOB 2.2 is to restate, in slightly amended form, and as a separate rule, the part of Principle 7 (Communications with clients) that relates to communication of information. This enables a customer, who is a private person, to bring an action for damages under section 138D (Contravention of rules) of the Act to recover loss resulting from a firm that carries on the activities referred to in ■ MCOB 2.1.3 R communicating information, in the course of those activities, in a way that is not clear or fair, or that is misleading. ■ MCOB 2.2 also clarifies the expectations of the FCA where any rule requires the provision of information and there are two or more customers.

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General

G 2.2.2

In many circumstances there will be two or more *customers* under any *home* finance transaction, or two or more prospective customers looking to enter into the same home finance transaction. In such circumstances, where a rule in MCOB requires the provision of information to such customers and the customers have different addresses, a firm sending out this information should send it to each address. If the customers share the same address it will be sufficient to send a single copy of the information addressed to each of the customers.

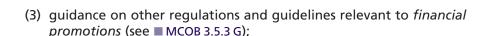
Prescribed terms for regulated mortgage contracts, home reversion plans and regulated sale and rent back agreements

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

- (1) describe any early repayment charge as an 'early repayment charge';
- (2) describe any higher lending charge as a 'higher lending charge';
- (3) describe any lifetime mortgage as a 'lifetime mortgage';
- (4) describe any home reversion plan as a 'home reversion plan'; and
- (5) describe any regulated sale and rent back agreement as a 'sale and rent back agreement';

and not use any other expression to describe them.

2.2.4	R	Prescribed terms for regulated mortgage contracts, home reversion plans and regulated sale and rent back agreements [deleted]
2.2.5	G	Related investment advice Firms are reminded that they should follow the relevant rules in ■ COBS 6 and ■ COBS 13 relating to advice and disclosure on investments if they are advising the customer on an investment such as an annuity associated with an equity release transaction or an ISA used as a repayment strategy.
		Clear, fair and not misleading communications and financial promotions
2.2.6	R	(1) When a firm communicates information to a customer, it must take reasonable steps to communicate in a way that is clear, fair and not misleading.
		(2) [deleted]
2.2.6A	R	A firm which approves a financial promotion of a home purchase plan must take reasonable steps to ensure that the financial promotion is clear, fair and not misleading.
2.2.7	G	When considering how to comply with the requirements of ,these <i>rules</i> on clear, fair and not misleading communications and <i>financial promotions</i> , a <i>firm</i> should have regard to the <i>customer</i> 's knowledge of the <i>home finance transaction</i> to which the information relates.
2.2.8	G	The rule on clear, fair and not misleading communications covers all communications with customers, for example any oral or written statements, telephone calls and any correspondence which is not a financial promotion to which MCOB 3 (Financial promotion) applies. In respect of financial promotions of qualifying credit, of home reversion plans or of regulated sale and rent back agreements, firms should note the separate requirements of MCOB 3.
2.2.8A	R	If a <i>firm</i> uses a figure equivalent to an <i>APR</i> in a communication of a <i>financial</i> promotion of a home purchase plan, when calculating that figure it must use an approach equivalent to the <i>APR rules</i> .
2.2.8B	G	The following guidance may be relevant to a firm that communicates or approves a financial promotion of a home purchase plan:
		(1) guidance on what 'communicate', 'approve' and 'financial promotion' mean, and on the media of communication to which financial promotion rules apply (see ■ MCOB 3.2.1 G and ■ MCOB 3.2.2 G);
		(2) guidance on other Handbook provisions relevant to financial promotions (see ■ MCOB 3.2.8 G to ■ MCOB 3.2.9 G);



- (4) guidance on referring to the FCA (see MCOB 3.6.2 G (3));
- (5) guidance on the clear, fair and not misleading standard (see ■ MCOB 3.6.5 G, ■ MCOB 3.6.10 G and ■ MCOB 3.6.14 G); and
- (6) guidance on the use of the Internet for communicating financial promotions (see ■ MCOB 3.12 and ■ PERG 8.22).
- G 2.2.9 Prominence of relevant information can play a key role in ensuring that a communication is clear, fair and not misleading. Where this is the case, the firm should consider prominence in the context of the communication as a whole. Use can be made of the positioning of text, background and text colour and type size to ensure that specified information meets the requirements of MCOB.

