Changes to mortgage responsible lending rules and guidance – feedback on CP19/14 and final rules

Policy Statement
PS19/27

October 2019

This relates to

Consultation Paper 19/14
which is available on our website at
www.fca.org.uk/publications

Email:
cp19-14@fca.org.uk

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1 Summary

1.1 We are setting out the changes we are making to our responsible mortgage lending rules based on our proposals and the feedback we received on them.

1.2 In Consultation Paper (CP) 19/14 we set out our concerns that some consumers cannot switch to a more affordable mortgage despite being up to date with their mortgage payments. This includes those who can't switch because of changes to lending practices during and after the 2008 financial crisis and subsequent regulation that tightened lending standards – often called 'mortgage prisoners'. We concluded that consumers in this position, or who could be in this position in the future, are suffering harm, as they are paying higher than necessary mortgage payments.

1.3 The CP proposed to remove barriers to consumers switching to a more affordable mortgage. We proposed changes to our responsible lending rules to allow lenders to use a more proportionate affordability assessment for consumers who are up to date with their existing mortgage and want to switch to a more affordable mortgage without borrowing more. The proposals also aimed to reduce the time and costs of switching for all consumers meeting this definition.

1.4 Overall, respondents supported our proposals and we are largely implementing them as consulted on subject to some changes to specific aspects (see paragraphs 1.28 and 1.29).

Who this affects

1.5 This policy statement will be directly relevant to:

- mortgage lenders
- mortgage administrators
- mortgage intermediaries
- unregulated entities that own mortgage books
- mortgage customers

1.6 It will also be relevant to stakeholders with an interest in the mortgage market, including:

- trade bodies representing mortgage firms
- charities and other organisations
- consumer organisations

The wider context of this policy statement

The Mortgages Market Study

1.7 A key finding of our Mortgages Market Study (MMS) interim report was that while there are high levels of switching in the mortgage market, there are some consumers that face barriers to getting a new deal.

1.8 Lender trade bodies responded with a voluntary agreement, covering around 97% of the market. Active lenders who have signed up to this are committing to give their existing customers on a reversion rate the chance to move to another deal, if they meet certain criteria.

1.9 However, customers of both inactive lenders and firms not authorised for mortgage lending (unregulated entities) do not benefit. They can only get a more affordable mortgage deal if they are able to switch to an active lender. In our MMS final report we proposed a package of remedies to address this and other issues, where the current market was falling short, leading to harm for some consumers. Following the final report, we published two consultations CP19/17 proposing changes to our mortgage advice and selling standards to address other harms identified through the Mortgages Market Study and CP19/14 as discussed below.

Our consultation

1.10 We proposed rule changes to remove potential barriers that may prevent consumers switching to a more affordable mortgage now or in the future. We also identified barriers for consumers, who whilst not affected by changing lending practices and regulation after the financial crisis, may be unable to switch to a more affordable mortgage despite being up to date with their payments, eg because their circumstances have changed.

1.11 Even where a consumer does not face barriers, there is a time and financial cost associated with switching. Our consultation proposals aimed to help more consumers switch and to reduce the cost of switching.

Implementation group

1.12 In August 2019, we set up an Implementation Group, initially comprising trade associations, lenders and third-party administrators. This group aims to help industry deliver the modified assessment and effectively promote switching options for certain consumers. We are working with the group to encourage lenders to help consumers get more affordable mortgages where possible.

How these rule changes link to our objectives

1.13 These rules support our objectives of maintaining an appropriate degree of protection for consumers and promoting effective competition in consumers' interests. By reducing barriers to consumers switching to a more affordable mortgage, more consumers will benefit from competition in the market. We want to reduce harm to consumers paying higher than necessary mortgage payments. We believe these rules will ensure firms only lend when a mortgage is affordable, therefore supporting our objective to protect and enhance the integrity of the UK financial system.

What we are changing

1.14 We want to help remove potential barriers to consumers switching to a more affordable mortgage by amending our responsible lending rules and guidance. The changes will mean that:

- mortgage lenders can choose to carry out a modified affordability assessment ('modified assessment') where the consumer:
  - has a current mortgage
  - is up to date with their mortgage payments
  - does not want to borrow more, other than to finance any relevant product, arrangement or intermediary fee for that mortgage
  - is looking to switch to a new mortgage deal on their current property
- inactive lenders, and administrators acting for unregulated entities, must review their customer books and develop and implement a communication strategy for relevant consumers (this will include contacting consumers to highlight the rule changes, that they may be able to switch as a result of the rule changes and directing them to relevant information)
- mortgage lenders that use the modified assessment must tell consumers the basis on which their affordability has been assessed and provide additional disclosures about potential risks
- mortgage lenders are required to report which sales have involved the modified assessment when they submit Product Sales Data (PSD) to us

Outcome we are seeking

1.15 We intend to remove any barriers in our rules to consumers who are up to date with payments being offered a more affordable mortgage. We want to help reduce the harm these consumers face from higher mortgage payments.

1.16 Lenders can choose to use a modified assessment for eligible consumers. This should help customers of inactive lenders and unregulated entities switch to a more affordable mortgage with an active lender.

1.17 These proposals are also intended to help reduce the time and cost of switching more generally.

Measuring success

1.18 We will look at how many eligible consumers (who are up to date with payments and not looking to borrow more) switch to a more affordable mortgage. Changes to our reporting requirements will help us monitor the extent to which these consumers switch and firms use the modified assessment.

1.19 The number of eligible consumers who switch based on the modified assessment is not just dependent on rule changes. It also relies on both lenders' willingness to use the modified assessment and consumers deciding to search for a new mortgage.

1.20 We are particularly interested in customers of both inactive lenders and unregulated entities, as they can only get a more affordable mortgage deal if they are able to switch to an active lender. We intend to separately review the extent these consumers have switched to a more affordable mortgage based on the modified assessment. This will also help us estimate how many of these consumers may have been unable to switch as their circumstances have put them outside lenders' risk appetites.

Summary of feedback and our response

1.21 We received 75 consultation responses - 22 from firms, 10 from trade associations, 8 from consumer groups and 35 from consumers. We also held several industry and consumer group liaison meetings.

1.22 Overall, most respondents supported our objective of removing barriers to switching to a more affordable mortgage. Firms and trade associations broadly favoured our proposals for the criteria consumers must meet to be eligible for the modified assessment, including that the new mortgage should be on the existing home. However, many consumers and consumers groups thought those not fully up to date with their mortgage payments and home movers should also be eligible.

1.23 Firms and trade associations said our proposed definition of a 'more affordable' mortgage should be made simpler. They also strongly opposed adding another condition to this definition that would require a comparison with the new lender's reversion rate. Consumer groups, in contrast, largely supported us including this condition.

1.24 There was support for allowing lenders to disapply specific Mortgages and Home Finance: Conduct of Business Sourcebook (MCOB) rules (eg on income and expenditure rules, or an interest rate stress test etc) when choosing to use the modified assessment. There was also broad support for only allowing lenders to use the modified assessment if they have a policy allowing consumers to switch to a more affordable mortgage.

1.25 We received considerable feedback on the consumer communication requirements and how we could amend them to improve engagement with consumers. Many consumer groups were concerned about consumers not being told about the rule changes sooner. But firms emphasised that communications should not be sent out until lenders are using the modified assessment and that consumer communication should be targeted.

1.26 Most respondents supported us requiring lenders to provide additional disclosure explaining the modified assessment and making borrowers aware of the potential risks.

1.27 All respondents supported us collecting information through regulatory reporting on lenders' use of the modified assessment.

1.28 In response to feedback and wider considerations eg our other work in the market, we are changing certain elements of our proposals, including:

- allowing eligible consumers to be able to borrow more to finance an intermediary fee, as well as a product or arrangement fee

- simplifying the definition of a 'more affordable' mortgage to a test of whether the new mortgage has a lower total expected cost and lower interest rate, over the deal period or whole term if there is no deal period, than the current mortgage. Also that the typical monthly payment under the new mortgage must be lower than the monthly payment paid in every one of the last 12 months under the current mortgage
- requiring inactive lenders and administrators of unregulated entities to develop and implement a communication strategy for contacting relevant consumers

1.29 Changes we will not be making are:

- allowing the modified assessment to be used where the consumer is looking to switch to a new mortgage deal on a new property (ie home movers)
- requiring a 'more affordable' mortgage to have a lower reversion rate than the rate the consumer is currently paying

Equality and diversity considerations

1.30 As set out in the consultation, we have considered the equality and diversity issues that may arise from these rule changes and do not consider that the proposals materially impact any of the groups with protected characteristics under the Equality Act 2010. We did not receive any consultation feedback on these considerations.

Next steps

1.31 All the rules outlined in this Policy Statement (PS) come into force immediately.

1.32 If you are a lender, you can choose to start using the modified assessment as soon as you are ready to do so.

1.33 Our changes to reporting requirements are effective immediately, so we expect firms to report the use of the modified assessment once they start using it. We will publish the technical documents (Data Reference Guide) in February 2020. We have also included a transitional provision to allow firms to align these reporting requirements with our Product Sales report (PSD001) changes as outlined in PS19/23. This allows firms to report any use of the modified assessment as a mortgage where the MCOB 11.7 transitional arrangements have been used.

1.34 If you are an eligible consumer looking to switch based on the modified assessment, we recommend you check Money Advice Service website.

2 Feedback and our response

2.1 We propose to change our responsible lending rules and guidance to allow firms to make modified assessments for consumers who are up to date with payments on their existing mortgage and want to switch to a more affordable mortgage without borrowing more.

Consumers these changes apply to

Consultation questions

Q1: ***Do you agree that our proposals should only apply to firms dealing with consumers that meet the conditions of 'eligible consumers'?***

Q2: ***Do you agree that 'up to date with payments' should be decided by not being in payment shortfall, both at the time of application and over the previous 12 months?***

Feedback received

2.2 There was broad support among firms and trade associations for our proposed eligibility conditions. However, there were a small number of firms who wanted 'eligible consumers' to be restricted to only those who cannot currently switch to a more affordable mortgage rather than all consumers who meet the conditions to be eligible consumers.

2.3 Most firms and some consumers considered that to be eligible a consumer must be up to date with payments. They agreed that if there had been no payment shortfall in the past 12 months the consumer had demonstrated that they can keep up their payments.

2.4 In contrast, most consumer groups thought that those not up to date on their mortgage payments should still be eligible in certain circumstances eg where consumers had only a limited level of payment shortfall (eg 1 or 2 missed payments). Some consumer groups and consumers suggested it should be sufficient for borrowers to show a history of 6 months without a payment shortfall rather than 12. Consumer groups also thought it possible that 'mortgage prisoners' were more likely to be behind with payments because of paying relatively high interest rates over a long period, and so reasons for any shortfall should be considered.

2.5 Most firms and trade associations agreed that to be eligible for the modified assessment a consumer must not want to borrow more, other than to finance any relevant product fee or arrangement fee for that mortgage. However, trade associations and some firms suggested that intermediary fees should also be allowed to be financed through the new mortgage. Some firms suggested consumers should be able to borrow more to consolidate any unpaid fees and charges payable under their current mortgage into the new one, therefore removing the barrier to switching for those with unpaid fees and charges.

2.6 Consumers groups were concerned that some 'mortgage prisoners' have mortgages that are linked with an unsecured loan where the interest rate of the unsecured loan would increase if just the mortgage element is switched to another lender. Consumers with these mortgages would face a barrier to switching as they would not be able to consolidate the unsecured loan with their current mortgage in any new mortgage under the modified assessment as this would be considered additional borrowing.

2.7 As a more general comment, many firms and trade associations stated that despite being eligible for the modified assessment there will be some consumers who currently cannot switch that will have circumstances that are outside the risk appetite of lenders.

Our response

We intend to keep the current criteria for a consumer to be eligible for the modified assessment. We are not proposing to restrict this to only those who face barriers to switching currently. These new rules are intended to help both this group and also to reduce the time and cost of switching for all eligible consumers.

We do not propose to include those who are in payment shortfall (or who have been for any time in the previous 12 months). We also are not amending the rules to allow those with unpaid fees and charges to use the modified assessment. Demonstrating the ability to keep up to date with mortgage payments, and other fees and charges, over a significant period is key to the eligibility test. It provides an indication of the consumer's likely ability to make future, lower payments under a more affordable mortgage. For those who do not meet this test, our rules in MCOB 13 set out how we expect firms to treat consumers in payment shortfall or arrears fairly, and to explore all relevant forbearance options for these consumers.

We are however, making a change so that intermediary fees (as well as product and arrangement fees) can be added to the mortgage without counting as additional borrowing. We are also allowing firms to consolidate unsecured loans that are contractually linked to a mortgage when using the modified assessment.

There will undoubtedly be eligible consumers that have circumstances that are unlikely to meet any lender's risk appetite and therefore who may be unable to switch to a new mortgage deal with a new lender. Where these consumers' mortgages are owned by an unregulated entity there are limits to our ability to address harm. Unregulated entities are required to have an FCA authorised administrator. However, depending on how the sale of the mortgage book to the unregulated entity is structured, this may not be sufficient for us to deliver the same level of protection as for consumers that have mortgages with regulated firms.

Decisions about our regulatory remit are a matter for the Government and Parliament. In our view, there is a case for extending the regulatory perimeter to capture all mortgage loans. This would leave us better able to influence market behaviour through a combination of our

Principles and rules. It would, for instance, enable us to challenge more effectively firms that do not adjust their variable rates on a basis that is fair to borrowers, and it could extend the coverage of the Financial Ombudsman Service to the purchaser of a mortgage book and their subsequent decisions. However, by itself changing the perimeter will not resolve the issues for consumers trapped with unregulated entities. If the perimeter is extended, we would also need to assess the rules needed to support a wider remit.

A more affordable mortgage

Consultation questions

Q3: ***Do you agree with our approach to defining a 'more affordable' mortgage, both where product or arrangement fees have been added to the mortgage and where they have not?***

Feedback received

2.8 Several firms stated that our approach to defining a 'more affordable' mortgage was potentially overcomplicated making it difficult for firms to put into practice and consumers to understand. It was suggested that we could simplify this and have a single approach whether fees have been added to the mortgage or not. Some firms recommended disregarding fees paid upfront or not considering the interest rate on the new mortgage in the test of whether the new mortgage is 'more affordable'.

2.9 Some firms and trade associations asked whether the definition of 'more affordable' meant that the consumer had to have paid an interest rate on their current mortgage that was higher than the proposed new rate for all of the previous 12 months.

2.10 Several consumer groups, a firm and a trade association suggested there was 1 circumstance where we should allow a mortgage to be considered 'more affordable' even where there is an increase in monthly payments. This was where the consumer was switching from an interest-only mortgage to a capital repayment mortgage.

2.11 There were also questions from firms about how to assess whether the interest rate is lower on the new mortgage where the current mortgage has multiple sub-accounts with different interest rates.

Our response

We recognise the benefit of having a simpler definition of whether a mortgage is a 'more affordable' mortgage, even if this means reducing some of the tailoring for different circumstances. We are therefore proposing a single definition of a 'more affordable' mortgage as:

- the total expected cost of the new mortgage over the incentivised deal period (or, if there is no such period, across the whole mortgage term), including any fees if paid upfront, is less than the consumer would have paid on their existing mortgage over that time

- the new mortgage must have a lower interest rate during the incentivised deal period (or, if there is no such period, across the whole mortgage term) than the interest rate the consumer is currently paying on their existing mortgage
- the monthly payment paid by the customer in each of the last 12 months under their existing mortgage is higher than the typical monthly payment under the new mortgage during the incentivised deal period (or, if there is no such period, across the whole mortgage term)

We have included fees where paid upfront because if the consumer pays a relatively large fee in this way, this can add significantly to the total cost of the new mortgage in the short term without being reflected in the monthly payment. We have also included requiring the new mortgage to have a lower interest rate to ensure that consumers do not end up in a worse position of having lower monthly payments but having to pay a higher interest rate over a longer term.

We are not allowing a 'more affordable' mortgage to include where the new mortgage has higher monthly payments if the consumer is switching from interest-only to a capital repayment mortgage. The principle of the new mortgage having lower monthly payments is essential to the modified approach of these rules, because the lending is based on the knowledge that the consumer has been able to maintain a certain level of repayment (over 12 months).

Where the consumer's current mortgage has multiple sub-accounts with different interest rates, the lender must assess whether the new mortgage is more affordable by comparing the current mortgage sub-account with the lowest interest rate with the new mortgage's interest rate eg if a consumer's current mortgage had 3 sub-accounts with interest rates of 2.5%, 3.5% and 3.99%, and the new mortgage had an interest rate of 3%. Then the new mortgage would not be more affordable as it has an interest rate of 3% which is higher than the rate of the current mortgage sub-account with the lowest interest rate (2.5%).

Consultation question

Q4: ***What are your views on a definition of 'more affordable' that refers to both the interest rate during any incentivised deal period and the new lender's existing reversion rate at the time?***

Feedback received

2.12 Most firms and some trade associations strongly opposed the definition of a 'more affordable' mortgage including that the new lender's reversion rate must be no higher than the rate the consumer is currently paying. The main reason was that this would exclude a significant number of lenders from offering the modified assessment. The consequence of fewer lenders offering the modified assessment would be fewer consumers being able to benefit from this.

2.13 A practical concern raised with this condition was that having to identify the reversion rate of the current mortgage could be difficult for lenders, eg where the current lender has multiple reversion rates.

2.14 Firms also stated this additional condition was not essential as lenders offering the modified assessment are required to have a policy in place for offering their existing customers the ability to switch to a more affordable mortgage product (see Q6 feedback). In contrast, other trade associations and most consumer groups did support having this additional condition as a safeguard against consumers switching to a more affordable mortgage deal but ending up on a higher reversion rate. These trade associations noted that even where there is an internal switching policy in place, lenders may not always be able to offer the consumer a better deal, eg if the lender goes into administration and is no longer lending.

Our response

We recognise the merits of both views, but have decided to maintain the consultation approach and not include this additional condition in the definition of more affordable mortgage. Our reason is the potential it would have to significantly restrict the availability of the modified assessment.

The risk of a consumer ending up on a higher reversion rate than they are currently on, or would have ended up on at the end of their deal, can be mitigated in other ways. We have required lenders to provide an additional disclosure to alert consumers to this possibility. We have also required lenders to have an internal switching policy where they offer the modified assessment.

Consumers who switch based on the modified affordability assessment and then come to the end of an incentivised deal period should, because of this requirement, have the option to switch to a new deal with their current lender. They could also explore if another lender is willing to offer them a new deal using the modified assessment as long as they are still an eligible consumer.

Consultation question

Q5: ***Do you agree that we should allow lenders to extend the term of the mortgage when they undertake the modified assessment?***

Feedback received

2.15 Consumer respondents, consumer groups, trade associations and most firms supported allowing lenders to extend the term of the mortgage when using the modified assessment. Some consumer groups noted that this could potentially enable some consumers to switch from an interest-only to a capital repayment mortgage.

2.16 A small number of firms did not support allowing lenders to extend the term as there were concerns about this potentially removing the option of a term extension as part of forbearance if a consumer fell behind on their mortgage payments. Some firms were also concerned about consumers paying more in interest overall where there is a term extension. To address this, there were suggestions that term extensions should only be allowed where there are safeguards in place, eg where advice is required or where it can be shown that repayment on the existing term is also affordable.

Our response

We intend to maintain the consultation approach. Term extensions happen regularly in the market and we do not think it is necessary to restrict lenders from doing this when undertaking the modified assessment. Banning this could prevent certain consumers from moving to a more affordable mortgage where they are seeking to switch using the modified assessment. However, if the mortgage term extends into retirement, lenders are required to consider whether the consumer's income after retirement would be enough to enable them to meet their commitments under the contract (see Q8 feedback and response).

We have required lenders to provide an additional disclosure to alert consumers that they may end up paying more interest overall if their new mortgage ends later than their current one.

We are not proposing to mandate advice where there is a term extension as we do not consider this necessary for all consumers. Our selling standards rules (in MCOB 4) will ensure that many, although not all, looking to remortgage with a new lender get advice. Any lender would also have the option of only making use of the rules where they know advice has been given in some or all circumstances.

Internal switching policy

Consultation question

Q6: ***Do you agree with our proposal to only allow lenders to use the modified affordability assessment if they have a policy allowing consumers to switch to a more affordable mortgage?***

Feedback received

2.17 The was support for this proposal across industry and consumer groups. Only a small number of firms did not support this as they thought this restriction would limit the availability of the modified assessment.

2.18 Some firms and consumer groups asked what the impact on this internal switching policy would be if the mortgage book was sold on or securitised, or the lender became inactive. In these cases, a lender could be unable to offer their existing customer a new more affordable mortgage deal.

2.19 One consumer group and some consumer respondents wanted this policy to be taken further. They suggested we require lenders to have to undertake the modified assessment for all 'mortgage prisoners' and require lenders to offer these consumers a more affordable mortgage deal.

Our response

We intend to implement these proposals as consulted on. We accept that this means some lenders may not be able offer the modified assessment. However, we think this should not affect many lenders (based on experience with a similar provision in the industry voluntary agreement).

This rule is intended to prevent a consumer switching to a cheaper deal and then subsequently finding themselves no better off. The requirement is for lenders to have a policy of offering existing customers the ability to switch to a more affordable mortgage unless there is a good reason which means they cannot. Where the firm that owns the consumer's mortgage is no longer able to offer a new deal, the consumer can still explore whether other lenders would be willing to lend to them using the modified assessment.

We do not propose to require firms to lend to 'mortgage prisoners'. Our new rules allow lenders to choose to lend to eligible consumers using the modified assessment. Lending is a commercial decision and we recognise that some consumers have circumstances that are outside the risk appetite of many lenders.

How the new rules affect current MCOB rules

Income and expenditure

Consultation questions

Q7: ***Do you agree that we should allow lenders that choose to use the modified affordability assessment to disapply our income and expenditure rules (MCOB 11.6.5R to 11.6.15G)?***

Feedback received

2.20 There was broad support among all respondents for allowing lenders to choose to disapply these rules as part of the modified assessment. Only a small number of firms did not support this and stated that income should be verified where a consumer is switching to a new lender.

2.21 Some firms and trade associations noted that lenders will still need to undertake income or expenditure checks or both for other requirements, eg anti-money laundering or where the lender's business model involves securitising mortgage books and selling them to investors.

2.22 Some firms asked whether they have to disapply all the relevant current MCOB rules as a whole when undertaking the modified assessment or whether they could choose to disapply only 1 or 2 of these rules.

Our response

We welcome the support for these proposals and intend to continue as planned. We understand that firms have other requirements related to income and expenditure that they must meet.

To clarify, the modified assessment allows firms to disapply all the relevant current MCOB rules as a whole. Firms are also allowed to disapply some relevant current MCOB rules as a package but continue to adhere to another package of rules, eg a firm using the modified affordability assessment could choose to disapply our income and expenditure rules (MCOB 11.6.5R to 11.6.15G) but not to disapply our interest-only rules (MCOB 11.6.40G to 11.6.48R and MCOB 11.6.50R to 11.6.52G) or vice versa. But they cannot disapply 1 of the rules in a common set of rules but not the others, eg they cannot disapply the income rule (MCOB 11.6.8R) but continue to apply the expenditure rule (MCOB 11.6.10R). Of course, firms using the modified assessment will be free to carry out their own form of assessment where they are disapplying these MCOB rules, eg a firm may choose to apply their own interest rate stress test.

Q8: ***Do you agree that we should require lenders to consider whether the consumer's income after retirement would be enough to enable them to meet their commitments under the contract?***

Feedback received

2.23 All consumer groups, most firms and trade associations agreed that we should require consideration of a consumer's income after retirement as part of the modified assessment. They recognised that income changes in retirement can have a significant impact on affordability. Some firms thought we should also require consideration of other foreseeable changes in circumstances, eg divorce or separation or when the household is expecting a new baby.

2.24 Some firms and consumer groups asked whether this requirement applied where the consumer who is looking to switch is based on the modified assessment is already retired.

2.25 A small number of firms did not support this approach. They thought this could lead to lenders not using the modified assessment to lend into retirement.

Our response

We welcome the broad support for this requirement and intend to include this as planned. We do not propose to include additional requirements to consider other potential changes in income and expenditure as this would replicate an existing rule (MCOB 11.6.14R) and the policy intention is to disapply rules that are seen as being barriers to switching.

Firms are not required to consider the consumer's income in retirement if the consumer is already retired. Our new rule states that the requirement to consider income in retirement only applies where the new mortgage term extends beyond the date on which the customer expects to retire (MCOB 11.9.8G (3)).

Interest rate stress test

Consultation questions

Q9: ***Do you agree that we should allow lenders that choose to use the modified affordability assessment to disapply our interest rate stress test rules (MCOB 11.6.18R to 11.6.19G)?***

Q10: ***Do you agree that we should introduce guidance that, if considering future interest rate rises, lenders may wish to take into account the fact that the consumer is currently meeting payments at a higher rate than on the more affordable mortgage?***

Feedback received

2.26 There was broad support for these proposals from both consumer groups, consumers and industry respondents. Some firms and a trade association said that some lenders may still do an interest rate stress test when using the modified assessment to satisfy their own lending risk appetite.

2.27 There was a mixture of views on the guidance. Some firms said it would be helpful for lenders, while others considered it unnecessary.

Our response

We intend to implement the proposal as planned given that some have said they would find it helpful.

Interest-only mortgages

Consultation questions

Q11: ***Do you agree that we should allow lenders that choose to use the modified assessment to disapply MCOB 11.6.40G to 11.6.48R and MCOB 11.6.50R to 11.6.52G as long as the consumer is not trying to increase the proportion of the loan on an interest-only basis?***

Feedback received

2.28 Many firms and trade associations did not support allowing lenders to disapply our rules and guidance on interest-only mortgages. They stated that consumers without a credible repayment strategy in place for their interest-only mortgage would be outside the risk appetite of many lenders. They were concerned that disapplying these rules would send confusing messages to consumers without a credible strategy. One trade association and a firm said that consumers in this position should be signposted to independent advice to explore their options.

2.29 Some firms thought there was a mismatch between allowing lenders to disapply these rules but still requiring them (MCOB 11.6.49R) to contact consumers with interest-only mortgages to check on the repayment strategy.

2.30 All consumer groups and consumer respondents agreed that we should allow lenders to choose to disapply these rules and guidance on interest-only mortgages when using the modified assessment. They stated that many consumers who are currently unable to switch will have an interest-only mortgage and these groups did not want consumers in this position to be unable to benefit from the modified assessment.

Our response

We still intend to allow lenders that use the modified assessment to disapply our rules and guidance on interest-only mortgages (MCOB 11.6.40G to 11.6.48R and MCOB 11.6.50R to 11.6.52G). These rules do not require lenders to offer mortgage deals to consumers without a credible repayment strategy if they are outside their lending risk appetite. Also, lenders can still encourage consumers remortgaging with them to take steps to have a repayment strategy in place.

Our implementation group is developing communications and signposting for consumers contacted as a result of the new rules. This includes thinking about relevant and helpful information for those consumers that remain unable to switch as their circumstances put them outside lenders' risk appetites eg those consumers with interest-only mortgages without a credible repayment strategy.

Home movers

Consultation questions

Q12: ***Do you have views on whether the modified assessment should be available for home movers looking to switch to a new lender?***

Feedback received

2.31 Most firms and trade associations did not think the modified assessment should be available for those looking to switch to a new mortgage deal on a different property. The chief reason given was that moving home is generally associated with wider changes in the consumer's financial circumstances, eg getting a new job or increases in living costs. Similarly, there are costs involved in moving such as stamp duty or legal fees and there could be changes to the loan-to-value (LTV) of the mortgage. Even where the consumer is moving to a lower value, potentially smaller home (downsizing), this could be linked to a change of financial circumstances, eg recent reduction in household income.

2.32 Those expressing concerns thought an affordability assessment that considers income and expenditure was necessary to properly consider the impact of these potential changes in circumstances. Some firms suggested we could evaluate and consider extending to home movers after the new modified assessment has first been embedded for eligible consumers looking to switch to a new mortgage deal on their current property.

2.33 Some lenders supported including home movers in certain circumstances, eg where there is no increase in mortgage debt, LTV or loan size.

2.34 Consumer groups and the consumers that responded wanted home movers included to allow mortgage prisoners who want to port their mortgage, 'downsize' or move to a more suitable property to be eligible.

Our response

We do not intend to allow the modified assessment to be available for home movers looking to switch to a new mortgage deal. We agree that moving home is likely to be associated with potentially significant changes in income and expenditure that make an affordability assessment that considers these more appropriate.

Also, as several firms said, where a consumer is looking to downsize and borrow less many should be in a position to pass a standard affordability assessment that considers income and expenditure.

Not extending the approach to home movers also means our rules remain aligned with the FPC affordability recommendations which apply to home movers looking to switch to a new lender.

3 Changes to other rules and guidance: Feedback to CP19/14 and our response

3.1 This chapter summarises the feedback to our proposals on consumer communications, additional disclosure and regulatory reporting.

Consumer communications requirements

Consultation questions

Q13: ***Do you agree that we should require inactive lenders and administrators acting for unregulated entities to contact their customers and make them aware that our rules mean they may be able to switch to a new mortgage product with a new lender?***

Q14: ***Do you agree that administrators and inactive lenders should only contact customers that have a residential mortgage, that is not a lifetime mortgage, and who are up-to-date with payments and on a reversion rate?***

Feedback received

3.2 There was broad support for requiring inactive lenders, and administrators acting for unregulated entities, to contact their customers and make them aware that the new rules may mean they can switch to a new lender.

3.3 Consumers groups emphasised the need for the communication to be clear, understandable and engaging to be effective. Some consumer groups also thought the communication would be more effective if it was more frequent rather than one-off. There was also some misunderstanding of the 13-month deadline included in the proposed rules. Some respondents thought firms would not have to send the communication until 13 months after the new rules came in, whereas the rules allowed firms to send these communications earlier than this, as long as they do so within this timeframe.

3.4 Firms, trade associations and a consumer group agreed there is a need for any communications to avoid raising expectations of consumers who are unlikely to be able to benefit from the modified assessment. To prevent this, trade associations and firms suggested there should be greater flexibility in the rules to allow for more tailored and targeted communications. On the timing of any communications, firms and trade associations flagged the risk of these being sent before lenders begin using the modified assessment.

3.5 Some firms recommended that any communications be agreed between lenders, intermediaries and consumer groups. A trade association and some firms also suggested that administrators and inactive lenders should only contact a more targeted group of consumers who are more likely to be within the risk appetite of most lenders. They suggested that in addition to the criteria suggested in Q14, contact should only be made with consumers who:

- do not have outstanding fees and charges payable under the current mortgage
- do not have a short remaining term
- have a remaining balance above a set minimum amount
- do not have a high LTV mortgage
- have a credible repayment strategy where they have an interest-only mortgage
- do not have a low value property below a set minimum amount

3.6 There were mixed views on where consumers should be directed for further information. Some firms suggested an independent portal, others a centralised means of checking eligibility and some suggested directing consumers to intermediaries.

Our response

We welcome the support for this consumer communication requirement.

We recognise the benefits of allowing a more tailored approach to ensure the communication is effective and also to manage consumer expectations. To reflect this, we have amended our rules to require firms to have and operate a communication strategy. This will still mean firms must contact consumers about the rule changes but it gives flexibility for communications to be more effectively targeted and sent more frequently.

This new strategy must be in place within 6 months of the introduction of the new rules and any contact with relevant consumers should be made no later than 10 months after the new rules are introduced, ideally as soon as the firm is able to. We appreciate that firms will only be able to send out communications when there are lenders who are using the modified assessment. We understand from firms that this could take up to 6 months from the final rules being published, although we encourage lenders to deliver this as quickly as they can.

We want to help avoid raising consumer expectations where they are unlikely to be able to benefit from the modified assessment. To do this, we have included an additional condition. This excludes from any communications consumers who have outstanding fees and charges payable under current mortgage (eg arrears administration charges or buildings insurance where this has been paid by the lender) as they are not eligible for the modified assessment. We are not adding any further exclusions as lenders have different risk appetites and therefore will vary in the consumers they are willing to lend to using the new rules.

The implementation group set up with lender representatives and other stakeholders is developing proposals for the key messages to be included in communications, as well as thinking about the sources of information that could be available and how consumers can be referred to them.

Additional disclosure

Consultation questions

Q15: ***Do you agree we should require lenders to give this disclosure?***

Feedback received

3.7 All consumer groups and most firms agreed that with our proposal to require the new lender to provide consumers with an additional disclosure that sets out:

- what steps the lender has taken to determine whether the new mortgage is more affordable than the existing mortgage, and how those steps differ from the lender's standard approach to assessing affordability
- that there is a risk the consumer could end up on a higher reversion rate than their current mortgage rate
- the assessment of whether the new mortgage is more affordable for the consumer has not included any early repayment charges to leave their current mortgage
- if the new mortgage will terminate later than the current one, that the consumer may end up paying more interest overall

3.8 A small number of firms did not think highlighting the potential risks was necessary as they are largely already known to consumers.

3.9 The rules require the lender to provide this disclosure to the consumer no later than the mortgage offer document. Some firms suggested that this disclosure should be provided at an earlier stage.

3.10 Consumer groups emphasised the need for this disclosure to be easy to understand. Trade associations suggested that good practice examples of this disclosure would be useful to ensure the potential risks are fully explained to the consumer.

Our response

We intend to require this disclosure as consulted on as it is important that any consumer who switches under the modified assessment is aware of potential risks associated with this. The rules do not prevent firms from giving this disclosure at an earlier stage than when they provide the offer document.

The implementation group is considering whether there are examples that can be shared across the industry.

Regulatory reporting

Consultation questions

Q16: ***Do you agree we should require lenders to report data on use of the modified affordability assessment?***

Q17: ***Do you agree that we should amend SUP to state that, where lenders have sold a mortgage using the modified assessment, they are not required to report the affordability data required in PSD?***

Feedback received

3.11 There was general agreement among firms, trade associations and consumer groups with our approach to collecting information on use of the modified assessment, including not requiring PSD reporting on affordability data. Respondents recognised the importance of this regulatory reporting to help us understand where the modified assessment is being used to help consumers switch to a new deal.

3.12 Many firms asked for alignment between these reporting changes and the reporting changes in PS19/23 to minimise the impact of reporting systems changes.

Our response

We intend to proceed with these regulatory reporting changes.

We understand firms wish to see these changes aligned with other reporting changes. We want firms to start reporting as soon as lenders have sold a mortgage using the modified assessment as this will help us understand where our new rules are being used to help consumers switch to a new deal. So, the reporting requirements will come into force at the same time as the new rules. But we have included a transitional provision in the rules that allows firms to report any use of the modified assessment as a mortgage where the MCOB 11.7 transitional arrangements have been used (in SUP 16 Annex 21 Reporting Fields).

This transitional provision will be in place until the end of the implementation period for our Product Sales report (PSD001) changes as outlined in PS19/23

We plan to publish the technical documents (Data Reference Guide) for these reporting requirements during February 2020.

Cost benefit analysis

3.13 We did not get any substantive feedback on our cost benefit analysis.

3.14 In the cost benefit analysis we estimated the number of consumers that could potentially benefit from switching, and who may do so, as a result of our proposals. We have gathered further data and this suggests this estimate is likely to be closer to our lower estimate that between 2,000 and 14,000 consumers would be able to switch to a better deal as a result of our proposals.

3.15 We want to correct a small mistake in the cost benefit analysis in Figure 2: Alternative possible mortgage rates for mortgage prisoners on page 33. The 3.10% listed in credit impaired, <90% box should instead be 5.44%.

3.16 The instrument published in this PS does not, in our view, differ significantly from the consultation draft. We therefore do not consider that a new or revised cost benefit analysis is required by section 138I(5)(a) of the Financial Services and Markets Act 2000.

Annex 1
List of non-confidential respondents

Association of Mortgage Intermediaries

Building Societies Association

Financial Services Consumer Panel

Money Advice Trust

Money Saving Expert

Mortgage prisoners group

Retail Banking Consultancy

The Consumer Council of Northern Ireland

The London Institute of Banking & Finance

Sesame Bankhall Group

StepChange Debt Charity

Surviving Economic Abuse

UK Credit Unions

UK Finance

We have also received responses from 25 other firms and industry organisations which have asked for their responses to be treated as confidential. We have also received responses from 35 individuals, which we will treat as confidential.

Annex 2
Abbreviations used in this paper

CP	Consultation paper
FCA	Financial Conduct Authority
LTV	Loan to Value
MCOB	Mortgages and Home Finance: Conduct of Business Sourcebook
MMS	Mortgages Market Study
PS	Policy Statement
PSD	Product Sales Data
SUP	Supervision Manual

We have developed the policy in this Policy Statement in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future.

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Appendix 1
Made rules (legal instrument)

MORTGAGES (RESPONSIBLE LENDING) INSTRUMENT 2019

Powers exercised

A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the "Act"):

(1) section 137A (General rule-making power);
(2) section 137T (General supplementary powers); and
(3) section 139A (Guidance).

B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on 28 October 2019.

Amendments to the Handbook

D. The Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) is amended in accordance with Annex A to this instrument.

E. The Supervision manual (SUP) is amended in accordance with Annex B to this instrument.

Citation

F. This instrument may be cited as the Mortgages (Responsible Lending) Instrument 2019.

By order of the Board
24 October 2019

Annex A

Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB)

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

11 Responsible lending, and responsible financing of home purchase plans

…

11.4 Application

Who?

…

11.4.2 R This table belongs to *MCOB* 11.4.1R

(1) Category of firm	(2) Applicable section
…	…
home purchase provider	Whole chapter except *MCOB* 11.6.1G(2), *MCOB* 11.6.5R(3) and (4), *MCOB* 11.6.18R, *MCOB* 11.6.19G, *MCOB* 11.6.20R(2) and *MCOB* 11.6.20R(9), *MCOB* 11.6.40G to *MCOB* 11.6.59G, *MCOB* 11.6.60R(2)(e), (3) and (4), ~~and~~ *MCOB* 11.7.3R and *MCOB* 11.9.
mortgage administrator	*MCOB* 11.9.2R and *MCOB* 11.9.14R.

Insert the following new section, MCOB 11.9, after MCOB 11.8 (Customers unable to change regulated mortgage contract, home purchase plan or provider). The text is not underlined.

11.9 Remortgaging with the same or a different lender with no additional borrowing

Application and purpose

11.9.1 R (1) Subject to (2), this section applies to a *firm* in relation to a *customer* who:

(a) is a borrower under a *regulated mortgage contract* ("the existing *regulated mortgage contract*"), whether with that *firm* or a different *firm*; and

(b) wishes to enter into a new *regulated mortgage contract* ("the proposed *regulated mortgage contract*") with that *firm* to replace the existing *regulated mortgage contract*.

(2) But this section only applies if:

(a) the proposed *regulated mortgage contract* would not involve the *customer* borrowing:

(i) a capital amount greater than that outstanding under the existing *regulated mortgage contract* at the date of the *customer*'s application for the proposed *regulated mortgage contract*; or

(ii) where a purpose of the proposed *regulated mortgage contract* is to replace two or more existing *regulated mortgage contracts*, a capital amount greater than the cumulative capital amount outstanding under those contracts at that date;

disregarding any increase that is exclusively for the purpose of financing a product fee or arrangement fee for the proposed *regulated mortgage contract* or a fee charged by a *mortgage intermediary* for *arranging* or *advising on regulated mortgage contracts* in relation to the proposed *regulated mortgage contract*;

(b) the proposed *regulated mortgage contract* is to be secured on the same property as the existing *regulated mortgage contract*;

(c) on the date on which the *customer* applies for the proposed *regulated mortgage contract*:

(i) there is no sum that has become due under the terms of the existing *regulated mortgage contract* that constitutes a *payment shortfall*; and

(ii) at no point in the period of 12 *months* ending on that date has there been a sum that has become due under the terms of the existing *regulated mortgage contract* that constituted a *payment shortfall*;

(d) the written policy required by *MCOB* 11.6.20R (responsible lending policy) addresses how the *firm* will apply the *rules* in this section; and

(e) the *firm* has and operates an internal switching policy (see *MCOB* 11.9.12R).

(3) For the purposes of this section, *linked borrowing* which is linked to an existing *regulated mortgage contract* is to be treated as if it were an existing *regulated mortgage contract*.

11.9.2 R *MCOB* 11.9.14R (notice to customers) also applies to a *firm* that has *permission* for *administering a regulated mortgage contract*.

11.9.3 G (1) The purpose of this section is to facilitate borrowers switching mortgages, provided that they are not taking out additional borrowing. But the mortgage does not have to be exactly like-for-like and the borrower can, for example:

(a) extend the term of the mortgage, for example to replace a mortgage with 10 years remaining with a new mortgage with a 25-year term;

(b) consolidate a *first charge regulated mortgage contract* and one or more *second charge regulated mortgage contracts* into the proposed *regulated mortgage contract* (but unsecured loans and other debts cannot be consolidated, unless the unsecured loan or debt is *linked borrowing* which is linked to an existing *regulated mortgage contract*);

(c) move from an *interest-only mortgage* to a *repayment mortgage* (provided it is more affordable); or

(d) take a mortgage with a different type of interest rate, for example to move from a variable rate to a fixed rate.

(2) This section permits *firms* to choose to modify certain provisions when assessing a *customer*'s ability to afford a mortgage. The provisions capable of modification are grouped (such as the provisions linked to the assessment of income and expenditure). *Firms* can choose whether to adopt all, some, or none of the modifications in this section, on a case-by-case basis (though they cannot modify some provisions in a group and not others). However, we would expect *firms* to have regard to *Principle* 6 ("A *firm* must pay due regard to the interests of its *customers* and treat them fairly") and not unfairly apply *rules* in one case but not another where the *customers*' circumstances are otherwise the same.

(3) But the *firm* must have an internal switching policy in place and operate in accordance with it, if it wishes to rely on the *rules* in this section. This means that, if the *firm* has allowed a *customer* to remortgage to it, it will allow the *customer* the benefit of the *rules* in this section again, or rely on *MCOB* 11.6.3R or *MCOB* 11.7 (if relevant), if the *customer* wants to switch again to a more affordable product with the *firm* (see *MCOB* 11.9.12R). In addition, the *firm*'s

responsible lending policy (see *MCOB* 11.6.20R) must set out how the *firm* will apply the *rules* in this section.

(4) Where a *customer* has a *payment shortfall* and has entered into a repayment arrangement with their current *mortgage lender*, the *customer* should be treated as having a *payment shortfall* until such time as the shortfall is repaid. This would be the case even though the *customer* may have started to have a *payment shortfall* more than 12 *months* before the date on which they apply for the proposed *regulated mortgage contract* but they are (and have been) up to date with payments under the repayment arrangement. Where a *payment shortfall* has been capitalised in accordance with *MCOB* 13, the *firm* may treat the *customer* as eligible provided that the capitalisation occurred more than 12 *months* before the date on which the *customer* applies for the proposed *regulated mortgage contract* and the *customer* has made all the payments due under the mortgage contract during those 12 *months* on time.

The assessment of affordability

11.9.4 R (1) A *firm* may elect that the modifications to the *rules* in *MCOB* specified in (2) are to apply in relation to the proposed *regulated mortgage contract*. The *firm* may not elect that only some of those modifications apply in relation to the proposed *regulated mortgage contract* but not others.

(2) (a) *MCOB* 11.6.2R does not apply, but *MCOB* 11.9.5R applies in its place.

(b) *MCOB* 11.6.3R and 11.6.4E do not apply.

(c) *MCOB* 11.6.5R and 11.6.6R do not apply.

11.9.5 R (1) The *firm* must not enter into the proposed *regulated mortgage contract* unless that contract is more affordable for the *customer* (and any guarantor) than the existing *regulated mortgage contract*.

(2) The proposed *regulated mortgage contract* is more affordable than the existing *regulated mortgage contract* if:

(a) the aggregate amount of:

(i) the monthly payments due from the *customer* under that contract in respect of any discounted or introductory period, or (where there is no discounted or introductory period) in respect of the term of the proposed *regulated mortgage contract*; and

(ii) any product fee or arrangement fee due from the *customer* in relation to that contract, and any fee charged by a *mortgage intermediary* for *arranging* or *advising on* *regulated mortgage contracts* in relation to that contract, which the *customer* intends to pay without including it in the amount being lent under the proposed *regulated mortgage contract*;

is less than the aggregate amount due from the *customer* under the existing *regulated mortgage contract* (or all the existing *regulated mortgage contracts*, if more than one) in respect of the proposed *regulated mortgage contract*'s discounted or introductory period or (where there is no discounted or introductory period) in respect of the term of each existing *regulated mortgage contract*;

(b) the monthly payment that was due from the *customer* under the existing *regulated mortgage contract* (or the aggregate of the monthly payments due under all the existing *regulated mortgage contracts*, if more than one) in each of the 12 *months* before the date on which the *customer* applies for the proposed *regulated mortgage contract*, ignoring any atypical payments, was greater than:

(i) the typical monthly payment which would be due from the *customer* under the proposed *regulated mortgage contract* in any discounted or introductory period; or

(ii) (where there is no discounted or introductory period) the typical monthly payment which is expected to be due for the term of the proposed *regulated mortgage contract*; and

(c) the interest rate applicable under the proposed *regulated mortgage contract*:

(i) in respect of any discounted or introductory period; or

(ii) (where there is no discounted or introductory period) that which is expected to apply during the term of the contract;

is lower than the interest rate currently applicable under the existing *regulated mortgage contract* (or each existing *regulated mortgage contract*, if more than one).

11.9.6 G (1) *MCOB* 11.6.7G does not apply in relation to a *regulated mortgage contract* entered into under *rules* disapplied by virtue of *MCOB* 11.9.4R.

(2) *MCOB* 11.9.5R(2) determines whether one *regulated mortgage contract* is more affordable than another. The references in that *rule*:

(a) to a discounted or introductory period include, for example, any fixed rate period after which a different interest rate applies, and any period in respect of which interest is deferred. Where interest is due in respect of a discounted or introductory period but is deferred, it is the gross rate payable that should be considered for the purposes of the conditions in *MCOB* 11.9.5R(2), as if interest were not deferred;

(b) to a typical monthly payment should be taken to ignore any payment in respect of a period greater or less than a *month* (for example, where a first payment is larger, or smaller, than that which would normally be due because it relates to a period greater or less than a *month*);

(c) to aggregate amounts due under the existing *regulated mortgage contract* should be taken to be on the assumption that that contract would not be redeemed early and would not incur an *early repayment charge*; and

(d) to future payments or interest rates should be taken to be on the assumption that there is no variation to the reference rate in question, unless the *regulated mortgage contract* expressly provides for a variation (for example, when considering a lifetime Bank of England base rate tracker, it should be assumed that the Bank of England base rate will remain unchanged).

Assessment of income and expenditure

11.9.7 R (1) A *firm* may elect that the modifications to the *rules* in *MCOB* specified in (2) are to apply in relation to the proposed *regulated mortgage contract*. The *firm* may not elect that only some of those modifications apply in relation to the proposed *regulated mortgage contract* but not others.

(2) (a) *MCOB* 11.6.8R, 11.610R and 11.6.12R (income and expenditure) do not apply.

(b) *MCOB* 11.6.14R (future changes to income and expenditure) does not apply, but if the term of the proposed *regulated mortgage contract* extends beyond the date on which the *customer* (or, where there are joint borrowers, one of them) expects to retire or, where that date is not known, the date on which the *customer* will reach the state pension age, the *firm* must consider whether the *customer*'s income beyond that date would be sufficient to enable them to meet their commitments under the contract.

(c) *MCOB* 11.6.18R (considering the effect of future interest rate rises) does not apply.

11.9.8 G (1) *MCOB* 11.9.7R modifies the affordability assessment required by *MCOB* 11.6, in line with the modification to *MCOB* 11.6.2R made by *MCOB* 11.9.4R. This is on the basis that a *customer* who has evidenced an ability to afford a mortgage at a higher monthly payment than that which would be charged under the proposed *regulated mortgage contract* may be treated as likely to be able to afford the proposed *regulated mortgage contract*.

(2) *MCOB* 11.6.9G, 11.6.11G, 11.6.13G and 11.6.15G do not apply in relation to a *regulated mortgage contract* entered into under *rules* which are disapplied by virtue of *MCOB* 11.9.7R.

(3) If the term of the proposed *regulated mortgage contract* extends beyond the date on which the *customer* (or, where there are joint borrowers, one of them) expects to retire or, where that date is not known, will reach the state pension age, the *firm* should take a prudent and proportionate approach to considering whether the *customer*'s income beyond that date would be sufficient to enable them to meet their commitments under the contract. The degree of scrutiny to be adopted may vary according to the period of time remaining to retirement when the assessment is made. The closer the *customer* is to retiring, the more robust the evidence of the level of income in retirement should be. For example, where retirement is many years in the future, it may be sufficient merely to confirm the existence of some pension provision for the *customer* by requesting evidence such as a pension statement; where the *customer* is close to retirement, the more robust steps may involve considering expected pension income from a pension statement.

(4) This section does not prevent a *firm* from undertaking an investigation of the *customer*'s financial circumstances before offering to enter into a *regulated mortgage contract* with the *customer*. Where a *firm* does so, it may take into account that the *customer* is not in *payment shortfall* and that the proposed *regulated mortgage contract* is more affordable than the existing *regulated mortgage contract* when determining the nature and degree of that investigation. In particular, the *firm* may also wish to consider whether it is necessary to require the same information from the *customer* as it would from a *customer* who does not currently have a *regulated mortgage contract*.

(5) If the *firm* is considering the effect of future interest rate rises on the prospect of the *customer* meeting their obligations under the proposed *regulated mortgage contract*, the *firm* may wish to have regard to the extent to which the interest rate applicable to the existing *regulated mortgage contract* is higher than that applicable to the proposed *regulated mortgage contract*. The *firm* may also wish to have regard to the fact that the *customer* is not in *payment shortfall* in relation to the existing *regulated mortgage contract*.

Interest-only mortgages

11.9.9 R (1) A *firm* may elect that all of *MCOB* 11.6.41R, 11.6.43R, 11.6.46E, 11.6.46AR, 11.6.48R and 11.6.50R do not apply in relation to the proposed *regulated mortgage contract*.

(2) But a *firm* may not make an election under (1) if:

(a) the existing *regulated mortgage contract* is a *repayment mortgage* and the proposed *regulated mortgage contract* is an *interest-only mortgage*; or

(b) under the terms of the proposed *regulated mortgage contract*, the capital amount that will be outstanding at the end of that contract may be higher than that which would be outstanding at the end of the existing *regulated mortgage contract* (or the aggregate of that which would be outstanding at the end of each existing *regulated mortgage contract*, if more than one).

11.9.10 G (1) *MCOB* 11.6.40G, 11.6.40AG, 11.6.42G, 11.6.44G, 11.6.45G, 11.6.47G, 11.6.51G and 11.6.52G do not apply in relation to a *regulated mortgage contract* entered into under *rules* which are disapplied by virtue of *MCOB* 11.9.9R.

(2) *MCOB* 11.6.49R (review during the term of interest-only mortgages) applies to an *interest-only mortgage* entered into by a *firm* which has made an election under *MCOB* 11.9.9R(1).

Explanation of affordability assessment, and accompanying warning

11.9.11 R (1) This *rule* applies if a *firm* makes an election under any of the following *rules*:

(a) *MCOB* 11.9.4R (assessment of affordability);

(b) *MCOB* 11.9.7R (assessment of income and expenditure);

(c) *MCOB* 11.9.9R (interest-only mortgages).

(2) The *firm* must provide the *customer* with an explanation which indicates:

(a) what steps the *firm* has taken to ascertain that the proposed *regulated mortgage contract* is more affordable than the existing *regulated mortgage contract*; and

(b) how the steps it has taken differ from the steps it would have taken under *MCOB* 11.6 if the *firm* had not applied *rules* in this section.

(3) The *firm* must accompany the explanation with a warning (as relevant to the individual case) that:

(a) interest rates may increase and the *customer* could end up paying a higher interest rate than they are currently paying under the existing *regulated mortgage contract*, even though the *firm* has assessed that the proposed *regulated mortgage contract* is currently more affordable;

(b) the *firm*'s assessment that the proposed *regulated mortgage contract* is currently more affordable has not taken into account any *early repayment charges* that the *customer* may incur in relation to repaying their existing *regulated mortgage contract*; and

(c) where the term of the proposed *regulated mortgage contract* is to end later than the term of the existing *regulated mortgage contract*, the *customer* may end up paying more in interest overall as a result of entering into the proposed *regulated mortgage contract*.

(4) The *firm* must provide the explanation and the warning:

(a) in a *durable medium*; and

(b) no later than the *firm* provides the *customer* with an *offer document*.

(5) The *firm* need not provide an explanation or a warning under this *rule* if a *mortgage intermediary* has already provided the explanation and the warning to the *customer* in relation to the proposed *regulated mortgage contract.*

Internal switching policy

11.9.12 R (1) An internal switching policy is a policy which:

(a) is made or approved by the *governing body* of the *firm*; and

(b) commits or obliges the *firm*:

(i) to permit an eligible *customer* to enter into a more affordable *regulated mortgage contract* (see *MCOB* 11.9.5R(2)); and

(ii) to apply such of the *rules* in this section as may be necessary to enable that *customer* to enter into that contract (though the *firm* may apply other *rules* in addition if it wishes), or to rely on *MCOB* 11.6.3R or *MCOB* 11.7 (if relevant) to enable that *customer* to enter into that contract.

(2) For the purposes of an internal switching policy, a *customer* must be eligible if:

(a) the *firm* has entered into the existing *regulated mortgage contract* as the lender;

(b) the *firm* chose to apply one or more of the *rules* in this section in relation to the existing *regulated mortgage contract*;

(c) the *customer* wishes to enter into a more affordable *regulated mortgage contract* with the *firm* (see *MCOB* 11.9.5R(2)); and

(d) the *customer* meets the conditions in *MCOB* 11.9.1R(2)(c)(i) and (ii).

11.9.13 E If a *firm* has an internal switching policy but does not, without good reason:

(1) permit an eligible *customer* to enter into a more affordable *regulated mortgage contract*; or

(2) apply *MCOB* 11.6.3R or *MCOB* 11.7 (if relevant) or such of the *rules* in this section as may be necessary to enable that *customer* to enter into the more affordable *regulated mortgage contract*;

this may be relied on as tending to show contravention of *Principle* 6.

Notice to customers

11.9.14 R (1) For the purpose of this *rule*, a *customer* is a notifiable *customer* if, when the *firm* makes the determination required by this *rule*:

(a) the *customer* meets the conditions in *MCOB* 11.9.1R(2)(c)(i) and (ii), and there is no fee or charge which has become payable under the *regulated mortgage contract* and remains unpaid beyond the date on which it was due to be paid;

(b) the *customer*'s *regulated mortgage contract* is:

(i) not a *lifetime mortgage*; and

(ii) for residential purposes, and the *customer* does not have the lender's consent to let the property; and

(c) the *regulated mortgage contract* had a discounted or introductory period which has expired (such that the interest rate payable by the *customer* under that contract is a reversion or standard variable rate).

(2) A *firm* with *permission* for *administering a regulated mortgage contract* must have, and operate in accordance with, a strategy for:

(a) determining whether each of the *customers* in relation to whom the *firm* is carrying on that activity for an unregulated owner is a notifiable *customer*; and

(b) giving the notice required by this *rule* at least once to each such notifiable *customer*.

(3) For the purposes of (2), an unregulated owner is a *person* who does not have *permission* for *entering into a regulated mortgage contract* and:

(a) who entered into the *regulated mortgage contract* as lender; or

(b) to whom the rights of the lender under *regulated mortgage contract* have passed by legal or equitable assignment, or by operation of law.

(4) A *firm* which has *permission* for *entering into a regulated mortgage contract* but is no longer carrying on that activity in relation to a particular portfolio or book of *regulated mortgage contracts* must have, and operate in accordance with, a strategy for:

(a) determining whether each of the *customers* in that portfolio or book is a notifiable *customer*; and

(b) giving the notice required by this *rule* at least once to each such notifiable *customer*.

(5) The notice must:

(a) include a statement to the effect that it has recently become simpler for a *customer* to enter into a more affordable mortgage with another lender if the *customer* is not looking to borrow any more than they currently owe under their mortgage and has kept up to date with their mortgage payments over the last 12 *months*; and

(b) refer the *customer* to sources of information about how to switch their mortgage to a lender who applies the *rules* in this section.

(6) A notice under this *rule* must be in a *durable medium*.

(7) A *firm* is not required to give a notice under this *rule* to a *customer* in relation to a *regulated mortgage contract* if another *person* has given such a notice to the *customer* in relation to that contract.

11.9.15 R (1) The *governing body* of the *firm* must adopt or approve the strategy required by *MCOB* 11.9.14R no later than 1 May 2020.

(2) The *firm* must make the determination and give the notice required by *MCOB* 11.9.14R no later than 1 September 2020.

11.9.16 G In developing and implementing their strategy for notifying relevant borrowers of the possibility of switching lender under this section, *firms* should have regard both to the purpose of this section and to the likely timescales for lenders to be ready to offer mortgages to borrowers in reliance on the *rules* in this section. For example, they should neither notify borrowers before there are lenders ready to make use of the *rules* in this section, nor delay sending notices until shortly before 1 September 2020 (as to do so might leave borrowers paying for a less affordable mortgage for longer than is necessary).

Annex B

Amendments to the Supervision manual (SUP)

In this Annex, striking through indicates deleted text.

16 Reporting requirements

…

16 Annex 21R Reporting fields

This is the annex referred to in SUP 16.11.7R.

…

2 SPECIFIC REPORTING FIELDS

…

(c) Mortgages

…

Notes

…

Data reporting field	**Code (where applicable)**	**Notes**
Sales Data (report for all *regulated mortgage contracts*)		
…	…	…
Mortgage characteristics	… EL = a *second charge regulated mortgage contract* that is a *shared equity credit agreement* RM = a remortgage under *MCOB* 11.9 which does	… ‘Cashback’ should only be reported where it is not being provided as an incentive to pay legal costs and valuation fees. ‘RM’ or ‘RR’ should be used where the *mortgage lender* has relied on any of the *rules* in *MCOB* 11.9 (Remortgaging with the same or a different lender with no additional borrowing) in relation to the *regulated mortgage contract*. ‘RR’ should be used if the term of the

<table>
<tr><td></td><td>not extend into retirement

RR = a remortgage under MCOB 11.9 which extends into retirement

NA = not applicable</td><td>proposed regulated mortgage contract extends beyond the date on which the customer (or, where there are joint borrowers, one of them) expects to retire or, where that date is not known, will reach the state pension age; otherwise, ‘RM’ should be used.

…</td></tr>
<tr><td>…</td><td>…</td><td>…</td></tr>
<tr><td colspan="3">Affordability data

Do not report affordability data when affordability assessment has not been undertaken, i.e. for an interest roll-up mortgage.

Similarly, do not report affordability data if the mortgage lender has applied any of the rules in MCOB 11.9 (Remortgaging with the same or a different lender with no additional borrowing) in relation to the regulated mortgage contract, unless the term of the proposed regulated mortgage contract extends beyond the date on which the customer (or, where there are joint borrowers, one of them) expects to retire or, where that date is not known, will reach the state pension age. In that case, report only the following data elements: ‘Retirement age of first borrower’ and ‘Retirement age of second borrower’.

…</td></tr>
<tr><td>…</td><td>…</td><td>…</td></tr>
</table>

TP 1 Transitional provisions

…

TP 1.10 Mortgage activities

(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**
…	…	…	…	…	…

2	*SUP* 16.11.3R, *SUP* 16.11.5R, *SUP* 16.11.7R, *SUP* 16.11.8R and *SUP* 16 Annex 21R.	R	When submitting a sales data report required by *SUP* 16.11.7R in relation to a *regulated mortgage contract* entered into in reliance on the *rules* in *MCOB* 11.9, a *firm* (or its reporting agent appointed under *SUP* 16.11.11R) may, in relation to that contract, elect to comply with the provisions of *SUP* 16 Annex 21R as if: (1) the amendments to that Annex made by the Mortgages (Responsible Lending) Instrument 2019 had not been made; and (2) the contract were entered into in reliance on the *rules* in *MCOB* 11.7.	From 28 October 2019 to 31 March 2021.	On 28 October 2019.

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