Consultation on mortgage advice and selling standards

Consultation Paper

CP19/17***

May 2019

How to respond

We are asking for comments on this Consultation Paper (CP) by **7 July 2019.**

You can send them to us using the form on our website at: www.fca.org.uk/cp19-17-response-form

Or in writing to:
Pippa Lane
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

Telephone:
020 7066 9342

Email:
cp19-17@fca.org.uk

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1 Summary

Why we are consulting

1.1 This Consultation Paper (CP) contains proposals for changes to our mortgage advice and selling standards to address 3 harms identified through the Mortgages Market Study (MMS):

- our advice rules and guidance are a barrier to the development of tools to help consumers choose and buy a mortgage
- consumers who would like to buy a mortgage on an execution-only basis find it hard because they are diverted to advice and because execution-only sales channels are not always easy to use
- many consumers are overpaying for their mortgages, even when they get advice

1.2 The proposals in this CP are one part of a package of remedies arising from the MMS. These remedies aim to work together to support our objectives to ensure consumers have the information and support they need to make informed choices about how they buy a mortgage, and help them get good value from advice.

1.3 We think they will help address the harms identified above by making it easier for firms to present options to consumers without giving regulated advice. This will enable firms to make their execution-only sales channels easier to use. It will also require advisers to take account of price when choosing between suitable mortgages.

Who this applies to

1.4 This CP should be read by:

- mortgage firms
- trade bodies representing these firms
- consumer bodies

1.5 Who only needs to read this summary

- other trade bodies

1.6 Who doesn't need to read this consultation, but it affects them

- consumers who take out mortgages

The wider context of this consultation

1.7 The MMS evaluated aspects of the market following the changes brought in by the Mortgage Market Review (MMR) in 2014. It focused on first charge residential mortgages. The proposals in this CP also apply to second charge mortgages, though they may be less relevant as these mortgages are frequently used for debt consolidation where advice is required. The proposals in this CP do not apply to lifetime mortgages.

1.8 As part of our market study, we considered consumers' ability to make effective choices given the tools available.

1.9 We set out our vision for the market as one in which:

- borrowers who can afford a mortgage can choose suitable and good value products and services
- firms have a culture of treating all consumers fairly
- competition and proportionate regulation empower consumers to make effective choices before taking out a mortgage, and throughout its duration

1.10 To achieve this vision, we said we would like:

a. consumers to find it easier to find the right mortgage
b. a wider range of tools available to provide consumers with a choice about the support (including advice) that they receive
c. consumers choosing an intermediary to be able to do so on an informed basis
d. consumers to be able to switch more freely to new deals without undue barriers

1.11 Our proposed remedies are mutually reinforcing. For example, the development of effective online tools will be aided by the availability of sufficient eligibility and other qualification criteria. Changes to our advice rules and guidance may also be needed.

1.12 Through the interim report and responses to it, we identified 3 key harms related to our advice rules and guidance:

- our advice rules are a barrier to the development of tools to help consumers choose and buy a mortgage
- consumers who would like to buy a mortgage on an execution-only basis find it difficult to do so both because they are diverted to advice and because execution-only sales channels are not always easy to use
- many consumers are overpaying for their mortgages, even in advised purchases

What we want to change

1.13 To address these 3 harms we propose to:

- Change our Perimeter Guidance on mortgage advice to make clear that tools that allow search and filtering based on objective criteria are not necessarily giving advice, and to more closely align to the recently updated guidance on advising on retail investments.

- Permit more interaction with customers before firms are required to give advice.
- Make other changes that may help firms making their execution-only sales channels easier to use.
- Require advisers, if they recommend a mortgage which is not the cheapest of the mortgages that meet the customer's needs and circumstances, to explain why they have not recommended a cheaper mortgage.
- Minor amendments to correct a cross-reference or for the purposes of a gender-neutral drafting approach in the Handbook text.

Outcome we are seeking

1.14 Our proposals aim to give consumers more choice in how they buy a mortgage. One way we aim to achieve this is through removing barriers to the development of search and filter tools from mortgage lenders and intermediaries. We believe our changes will help firms to bring such tools to market. In addition, we think our proposals will:

- prevent consumers being diverted to advice because of interactions that do not influence purchasing decisions
- encourage firms to make execution-only sales channels easier to use

1.15 We also want advisers to explain their rationale where they have not recommended the cheapest of the suitable mortgages available. This should mean more consumers understand how price has been taken account of in the recommendation they are given and give them an opportunity to challenge the recommendation.

Measuring success

1.16 We will evaluate the success of our changes through our supervision of firms and monitoring of regulatory returns. We may also carry out research or work with firms to assess the impact of changes they have made, including on consumer outcomes.

Next steps

What do you need to do next?

1.17 We want to know what you think of our proposals. Please send us your comments by 7 July 2019. Please use the online response form on our website or write to us at the address on page 2.

What will we do?

1.18 We will consider your feedback and intend to publish our rules in a Policy Statement late in 2019.

2 The wider context

The harm we are trying to address

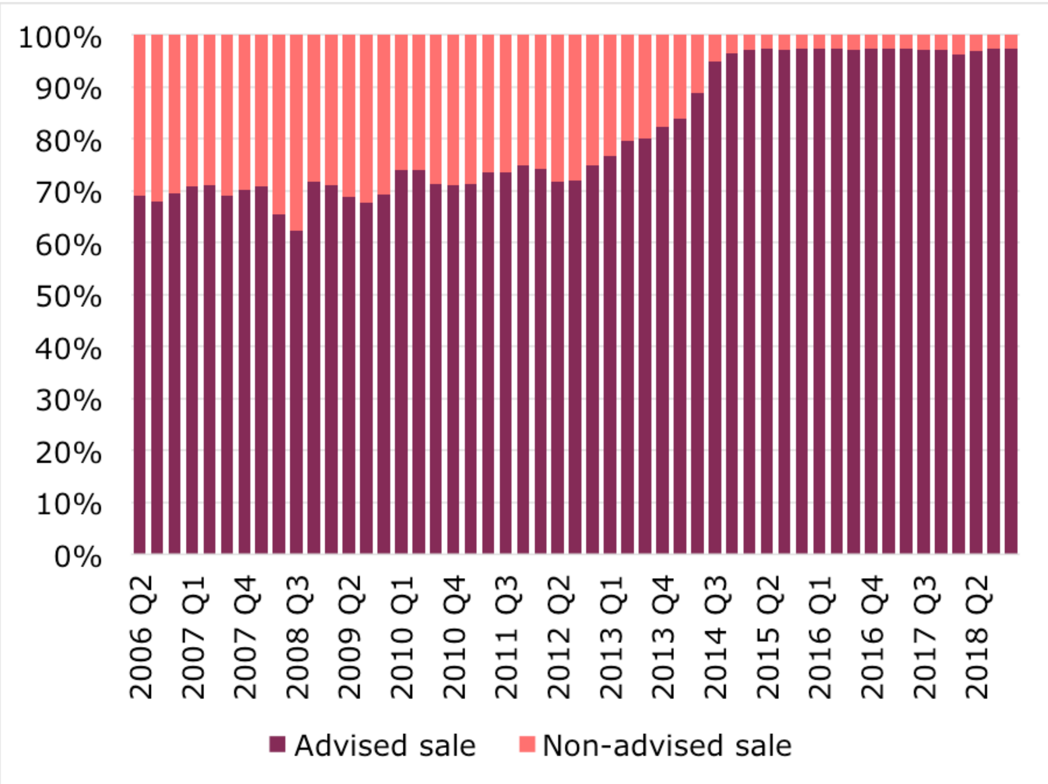
2.1 The Mortgages Market Study (MMS) evaluated aspects of the market following the changes brought in by the Mortgage Market Review (MMR) in 2014. This included consumers' ability to make effective choices given the tools available.

2.2 The MMR brought fundamental change to our regulation of the mortgage market. It introduced our responsible lending rules to ensure that mortgages are affordable. It also brought in changes to our mortgage advice and selling standards. These were introduced to tackle the harm that consumers believed they were receiving advice when they were not and that some were buying higher risk products that were not suitable.

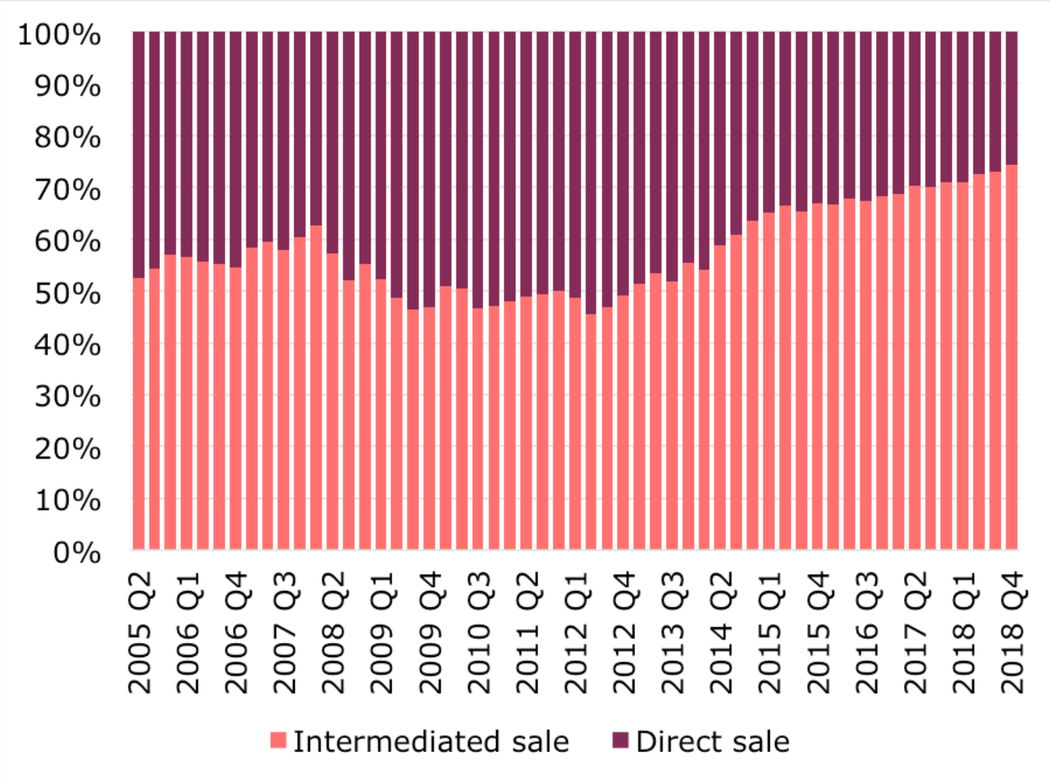
2.3 Before the financial crisis, many firms had a non-advised sales channel where staff would use scripted questions to guide consumers. Research found that many consumers who bought mortgages this way thought they were receiving advice. Some were buying higher risk products that were not appropriate for them, though we did not find evidence of widespread unsuitability.

2.4 The financial crisis did not affect the proportion of advised mortgage sales. As intended, the MMR increased the take-up of advice. Both pre- and post-crisis, around 70% of new sales were advised. The proportion of advised sales began to rise ahead of implementation of our MMR changes to advice and distribution. Post-MMR around 97% of new sales are advised (see figure 1).

Figure 1: Proportion of advised and non-advised mortgage sales



FCA Product Sales Data (Advised vs execution-only from April 2014)
Figure 2: Proportion of mortgage sales by channel



FCA Product Sales Data

2.5 Our MMR requirements also appear to have influenced the level of intermediation in new mortgage sales. This may be because intermediaries are better placed to upscale their advice capabilities. Before the financial crisis, between 50% and 60% of sales were intermediated. In the aftermath of the crisis, this fell to below 50% before gradually rising ahead of MMR implementation. Today around three quarters of new mortgages are sold by an intermediary.

2.6 These figures do not contain internal product transfers. Our MMS found that these accounted for around 40% of mortgages arranged in 2016. Lenders can offer internal product transfers interactively without providing advice. Around half of these sales were advised and 86% were sold direct by the lender. We consulted in CP 18/41 on collecting Product Sales Data for these transactions.

2.7 The MMS identified a lack of consumer-facing innovation in mortgage distribution and committed to looking at whether regulation was contributing to this. We asked whether our advice and distribution rules and guidance were a barrier to the development of tools to help consumers search for and buy mortgages. We also asked if certain consumers should have more choice about whether to take advice.

2.8 Many respondents cautioned against making radical changes to our advice and selling standards. This was partly because of the improvements our MMR changes brought to the market. This was also partly due to some firms not wanting major regulatory change following the MMR and the implementation of the Mortgage Credit Directive. We asked in the interim MMS report whether there were any groups of consumers that should have more choice over whether to take advice. Responses to the interim report encouraged us not to take this approach. This was because within any group there would be a range of capability to choose a suitable mortgage.

2.9 Despite this, we did receive suggestions for how our current system could be improved. Two key areas emerged.

2.10 First, some firms told us that our Perimeter Guidance is a barrier to the development of tools to help consumers search for and buy mortgages. It also appears that some firms are taking a particularly conservative approach to compliance in this area. This guidance was written before online transactions in financial services markets became widespread.

2.11 Our guidance is that generic information is likely to be advice if it steers a consumer towards one or more mortgages. This has been interpreted by some firms as meaning that they cannot provide search and filter tools on their websites. This is because these may steer a consumer towards one or more mortgages even if they are only filtering on objective criteria such as loan-to-value ratio and interest-rate type. Some firms do not want to give this facility to consumers as they do not want to risk being treated as having given advice on suitability when they have not undertaken the steps necessary to do so.

2.12 Our Perimeter Guidance on advising on retail investments has recently been updated following the Financial Advice Market Review. The new guidance takes account of different types of online sale. It helps firms decide whether their online tool is likely to be giving advice. Our Perimeter Guidance on advice in mortgages and investments now diverges.

2.13 Second, many respondents told us that some consumers who would like to buy a mortgage on an execution-only basis find it difficult to do so. In part, this is because our rules require advice to be given in most interactive sales. This means that some consumers are diverted from execution-only to an advised sale even if initially they only interact in ways unrelated to choosing a product.

2.14 Firms gave us examples of consumers who phone up for help with uploading their documents in an online execution-only purchase being told to make an appointment with a mortgage adviser because they have now interacted with the firm.

2.15 Firms also told us that they are reluctant to invest in their execution-only sales channels because our rules suggest that we do not look favourably on this sales channel. This can mean execution-only sales channels are not as easy to use as elsewhere in financial services.

2.16 The MMS found that around 30% of consumers could have found an identical suitable mortgage (or one with better features) that was cheaper than the one they bought. We estimated that, while most customers receiving advice obtained suitable mortgages, their likelihood of overpaying was not affected by whether they received advice or used an intermediary.

2.17 This might be contrary to expectation, given the training and experience of advisers and that intermediaries have a greater ability to search the market than consumers. Our Occasional Paper 33 also found that intermediaries are reasonably strong at picking a product that does not have a cheaper alternative among the lenders they know well. But they are less strong at picking better value mortgages among lenders they are less familiar with. An intermediaries' preference for familiar lenders could therefore lead to some of their consumers missing out on cheaper alternative mortgage products.

2.18 To inform our policy thinking we commissioned some consumer research to find out whether consumers understand the disclosure given before execution-only sales (MCOB 4.8A.14R(4) and (5)) Details of this research can be found in Appendix 2.

2.19 In general, consumers did understand that they were buying without advice. However, sometimes consumers thought they were giving up more regulatory protections than they were. We hope that firms will find the insights from this research useful in thinking about the way in which they disclose the implications of buying on an execution-only basis.

How it links to our objectives

Consumer protection

2.20 One of our operational objectives is to secure an appropriate degree of protection for consumers. Our advice rules and guidance have had the effect of limiting consumer access to execution-only purchases more than was intended. The changes we propose should make it easier for consumers to buy mortgages in this way without radically changing our MMR advice and selling regime.

Competition

2.21 We also have an objective to promote effective competition in consumers' interests. Our proposed changes should increase innovation in distribution and competition in the interests of all consumers.

Wider effects of this consultation

Greater engagement from consumers who don't want to transact face to face

2.22 Our changes should make it easier to buy a mortgage online. This might encourage engagement in the market from consumers who may feel that the face to face sales method is not for them.

What we are doing

2.23 We are proposing to make the following changes as set out in this CP:

- Changing our Perimeter Guidance on mortgage advice to make clear that tools that allow search and filtering based on objective criteria are not necessarily giving advice, and to more closely align to the recently updated guidance on advising on retail investments.
- Permitting more interaction with customers before firms are required to give advice.
- Other changes that may facilitate firms making their execution-only sales channels easier to use.
- Requiring an adviser, if they recommend a mortgage which is not the cheapest of the mortgages that meet the customer's needs and circumstances, to explain why they have not recommended a cheaper mortgage.

Equality and diversity considerations

2.24 We have considered the equality and diversity issues that may arise from the proposals in this Consultation Paper. We consider this further in our Equality Impact Assessment.

3 Our proposals

3.1 In this chapter, we set out our proposals to amend our mortgage advice and selling standards and Perimeter Guidance on advising on regulated mortgage contracts. These proposals aim to make it easier for firms to present options to consumers without providing advice and to make advisers consider price when choosing between suitable mortgages.

Changing our Perimeter Guidance on mortgage advice

3.2 Our Perimeter Guidance on advising on regulated mortgage contracts helps people understand whether they are likely to be undertaking this regulated activity. It reflects our view of the legislation, though only the courts can determine the meaning of the legislation with authority. It includes guidance on the distinction between giving advice or merely information, and on common exclusions such as those for journalists.

3.3 Our Perimeter Guidance on mortgage advice says that giving generic information or advice may amount to giving regulated advice if it steers the customer towards one or more mortgages. Some mortgage lenders and potential market entrants told us that this prevents them from developing online tools for consumers to search and filter available mortgages. This is because the filtering may result in one or several mortgages being displayed. In these cases, firms are not collecting information on the consumer's needs and circumstances. They do not want to be at risk of being treated as having given advice on suitability when they have not undertaken the necessary steps, so they do not provide this facility.

3.4 This guidance was written before online transactions were widespread in other markets. Now in the retail investments market, a range of tools exist for consumers to buy and sell online. These include tools that give advice and allow a consumer to transact without advice, as well as tools prompting consumers to buy or sell investments over time. Our Perimeter Guidance on advising on investments was updated following the Financial Advice Market Review (FAMR). This new guidance takes an updated view on what constitutes regulated advice and considers the role of online tools.

3.5 The statutory language which specifies the scope of the regulated activities is the same in both advising on mortgages and investments. The activity is providing 'advice on the merits of' entering into a regulated mortgage contract or buying or selling investments. Visit our website for a fuller description of advising on investments.

3.6 Because of this, we think we should more closely align our Perimeter Guidance on advising on regulated mortgage contracts with the Perimeter Guidance on advising on investments. In line with the FAMR approach, we propose to update our guidance to indicate that a tool that allows a consumer to search and filter based on objective factors (such as interest-rate type and term) is not necessarily giving advice.

3.7 This will make it easier for such tools to present options to consumers. Firms won't necessarily have to go through all the steps needed to comply with our advice requirements. We think that this is an appropriate way to update our Perimeter Guidance on mortgage advice to facilitate greater choice in how consumers buy mortgages, while maintaining an appropriate degree of protection for those consumers.

3.8 While addressing the concerns about search and filtering that were raised in response to the Mortgages Market Study (MMS), we have compared the 2 sets of guidance on mortgages and retail investments more generally.

3.9 In some cases, the FAMR review has resulted in new material in our Perimeter Guidance. This includes more detailed guidance on the boundary between advice and information and between generic advice and regulated advice. For example, the new material highlights the importance of the context of the sale. If a consumer asks what product they should buy, even if a recommendation is not given, it is likely that the firm is advising (PERG 8.28.8G). We propose to add this new material from retail investments to the mortgages chapter of our Perimeter Guidance.

3.10 Other new material relates to different types of online tool that either give advice (PERG 8.30A.14G and PERG 8.30A.15G) or information (PERG 8.30A.10G), and that create prompts to buy and sell for consumers (PERG 8.30.5G). We propose to bring these concepts across to the mortgages chapter but have modified the language and examples to reflect the context of the mortgages market. We would particularly value input on whether we have accurately characterised the types of tools that already exist or could be developed in the mortgage market.

3.11 In other areas, the current guidance on advising on regulated mortgage contracts and the current guidance on advising on investments diverge only slightly. In these cases, we propose to make changes to the mortgage advice chapter to align more closely to the wording in the retail investment guidance. These changes are often very minor, such as the proposed changes to PERG 4.6.20G where we change the word 'advice' to 'recommendation', and include two new examples of generic advice.

> **Q1:** **Do you agree with the proposed changes to our Perimeter Guidance to show that a tool allowing a consumer to search and filter based on objective factors is not necessarily giving advice?**
>
> **Q2:** **Do you agree that we should more closely align our Perimeter Guidance on mortgage advice with the Perimeter Guidance on advising on investments?**
>
> **Q3:** **Do you agree with the way we have characterised the types of tools that already exist or could be developed in the mortgage market?**

Modifying the interaction trigger for advice

3.12 The interaction trigger for advice was one of the key changes brought about by the Mortgage Market Review (MMR). This meant that, with some limited exceptions, when a firm interacts with a consumer in a mortgage sale they must give them regulated mortgage advice. The interaction trigger has been a major contributor to the move towards an almost fully advised market in new mortgage sales since the MMR.

3.13 Some respondents to the interim report of the MMS argued that we should keep the interaction trigger because few consumers could choose a suitable mortgage without advice. We did not see widespread evidence of consumers buying mortgages that were not appropriate to their needs and circumstance pre-MMR. We considered conducting further research, but evidence of customer capability to choose a suitable mortgage is difficult to collect.

3.14 Other respondents urged us to modify the interaction trigger. They felt its current formulation makes it difficult for some consumers to buy a mortgage on an execution-only basis. This is because they are diverted to an advised sale because of interactions that are not likely be confused with advice.

3.15 Firms gave examples, such as a customer phoning to ask what to do when an online application form freezes. Because this is an interaction, the firm then diverts the customer to an advised sale rather than assisting them with the technical issue and allowing them to proceed execution-only. This was not the MMR policy intent which, while aiming to increase the take up of advice, said that consumers should have choice over whether to take advice and that not every consumer needs advice (CP 11/31).

3.16 We consider we should modify the interaction trigger to exclude interactions that are unconnected with regulated advice. These include support with an application or ongoing case management, and allow firms to use generic information about products to answer customers' queries. This should give consumers more choice in the way they buy a mortgage as firms should understand there are a wider range of circumstances in which advice is not required.

3.17 This could reintroduce some of the risk identified in the MMR that consumers think they have been advised when they have not. However, we think this risk is limited by allowing only interactions most obviously unconnected with advice to be exempt from the interaction trigger. It was not the intention of the MMR to deny consumers the choice of an execution-only purchase.

3.18 As we have set out above, it appears that one of the effects of the current rules and guidance is that almost all consumers buying a new mortgage receive advice. This means they may be less likely to buy an unsuitable mortgage than if they proceeded on an execution-only basis. It also gives them access to redress for mortgage advice that is not suitable.

3.19 Our changes may mean that more consumers buy a mortgage on an execution-only basis and choose an unsuitable mortgage. However, we anticipate that, even under our proposals, most consumers in new purchases will still receive advice, as we are not removing the interaction trigger. In addition, the development of tools that allow consumers to search and filter may make it easier for consumers to choose a suitable mortgage.

Q4: **Do you agree that we should permit more interaction with customers before firms are required to give advice?**

Q5: **Do you agree with the examples of interactions that should not trigger the need to give advice?**

Changes that may remove barriers to firms making their execution-only sales channels more accessible

3.20 Some respondents to the MMS told us that some of our execution-only requirements suggest that we do not look favourably on this sales channel. Others felt that these requirements are designed to make it more difficult to sell in this way. We propose to make the following changes to equalise our treatment of advised and execution-only sales. These changes will also make it easier for firms to design good customer journeys for execution-only sales.

Removal of prescriptive detail on the firm's execution-only policy

3.21 Our rules require a lot of detail to be included in a firm's policy on execution-only sales. These include requiring an estimate of the amount of execution-only business they anticipate making. For a firm's advised sales policy, on the other hand, we rely on the High Level Standards section of the Handbook and are not prescriptive about what it should include.

3.22 Some respondents told us that this gives the impression that we consider execution-only sales to be inherently risker. We think we should remove our prescriptive requirements around a firm's execution-only policy. This would bring our requirements into line with our treatment of advised sales in this respect and avoid implying that we consider execution-only to be inherently riskier.

Q6: **Do you agree that we should remove the prescriptive detail on firms' execution-only policies?**

Clarify that firms can market their execution-only channels and adopt differential pricing between advised and execution-only channels

3.23 Some respondents told us that they believe our rule preventing a firm from encouraging a consumer to opt out of advice prevents them from marketing their execution-only channel or pricing execution-only and advised sales differently. We propose to add guidance to this rule to make clear that it does not prevent either of these things.

Q7: **Do you agree that we should give guidance to clarify that MCOB 4.8A.5R does not prevent a firm marketing their execution-only channel or pricing advised and execution-only sales differently?**

Minor change of process for the internal rate switch exception

3.24 Our rules contain an exception from the interaction trigger for internal rate switches. To make use of this, firms must first present the customer with a list of all the products available to them. Some firms have told us that, where the rates change (but not the products), they re-send the list before they can go ahead with an execution-only sale and this can be frustrating for consumers. The intention of this rule is that the consumer is aware of the entire range of products that the lender offers before they make their choice.

3.25 We propose to update this rule to say that if the firm adds new products to its range, or makes a change to interest rates or fees likely to be material to the customer's decision, it must first re-send the list to the customer before they can make use of the internal rate switch exception.

3.26 However, if products are removed or the interest-rates or fees change in a way that is unlikely to be material to the customer's decision, there is no need to re-send the list. We also propose to add guidance to this rule to remind firms of their obligations to be clear, fair and not misleading in their communications with customers.

3.27 The existing exception for internal rate switches primarily addresses circumstances where the firm is contacting an existing customer. However, the contact could be the other way around, with an existing customer telling their lender that they have found a deal with another firm and they wish to exit their contract. We propose that in these cases, the firm need only present to the customer the product that matches the loan identified by the customer, rather than the full list of products that the customer is eligible for.

Q8: **Do you agree that we should change the process for using the internal rate switch exception so the list need only be re-sent if new products are added or interest rates or fees change in a way likely to be material to the customer's decision?**

Q9: **Do you agree that in cases where the customer approaches their existing lender to ask whether they can match an offer from a competitor, the firm need only present the relevant product to use the internal switch exception?**

Allow execution-only disclosure to be given and recorded by audio or video

3.28 In almost all cases, when making an execution-only sale a firm must inform the customer of two things. First, that the firm is not required to check whether the mortgage is suitable for the customer. Second, that the customer will not benefit from our rules on assessing suitability (MCOB.4.8A.14R(4)). The customer must then make a positive election to go ahead with the purchase on an execution-only basis. This disclosure must be given in a durable medium, as well as orally if the firm speaks to the customer at any point during the sale. See Appendix 2 for research on consumer understanding of this disclosure. The positive election must also be made in a durable medium (MCOB.48A.14R(5))

3.29 We allow interactive execution-only sales for some transactions, such as internal rate switches and to high net worth customers. These are not necessarily face to face, but could be by telephone or video conference. In addition, audio or video disclosure could be used in non-interactive execution-only sales. We think it is sufficient for such disclosures to be recorded and held on file.

3.30 We also propose to change the current requirement that the disclosure and positive election must be in the same document. This could prevent firms from designing good online journeys for customers.

Q10: **Do you agree that we should allow the execution-only disclosure to be given and recorded by audio or video?**

Q11: **Do you agree that we should allow the disclosure and positive election to be in separate documents or recordings?**

Taking account of price when choosing between suitable mortgages in advised sales

3.31 The MMS found that around 30% of consumers could have found an identical or better mortgage that was cheaper than the one they bought. Whether they received advice made no difference to the likelihood that they overpaid.

3.32 Pre-MMR, our advice standards included a 'safe-harbour' price provision. This stated that, if an adviser recommended the cheapest suitable mortgage for a customer, they would be seen to have satisfied our requirement to recommend the most suitable mortgage. This was removed in the MMR because it was difficult for firms to attain and prove.

3.33 We are not proposing to return to the pre-MMR position. However, given the level of overpaying identified in the market study, we think that we should require advisers to consider price as a factor in their recommendations. We propose to add a requirement in advised sales that, if the adviser is not recommending the cheapest of the suitable mortgages from their product range, they must explain why to the customer and record the reason.

3.34 We think this approach reflects and builds upon good practice in the market. We are aware that many advisers already discuss price with their customers and if they are not recommending the cheapest of the suitable mortgages from their product range, explain why. We also consider that the proposed requirement is easier for firms to attain and prove than the pre-MMR price provision.

3.35 We do not want to incentivise advisers to focus on price at the expense of recommending a mortgage that meets the customer's other needs and circumstances. Because of this, we propose that the adviser must first ascertain the customer's needs and circumstances and identify the mortgages that meet these. In cases where the adviser does not recommend the cheapest of these mortgages, the adviser must explain why and keep a record of the explanation.

3.36 For example, an adviser may decide to recommend that a two-year fixed rate mortgage with no upfront fees meets the customer's needs. But because the cheapest of these is offered by a lender known to have a slow speed of service and the customer prefers an offer quickly, the adviser may recommend the next cheapest mortgage. It is in these cases, that the explanation must be given and recorded.

3.37 We think this gives the customer a chance to challenge the recommendation, as well as levelling up the quality of advice to the good practice already seen in the market.

> **Q12:** **Do you agree that we should require advisers, if they do not recommend the cheapest suitable mortgage, to explain why they have not recommended a cheaper mortgage?**

Other changes

3.38 We also propose minor amendments to correct a cross-reference in MCOB 4.1.4R(1), and for the purposes of a gender-neutral drafting approach in the Handbook text

> **Q13:** **Do you agree that we should make these minor amendments?**

Annex 1
Questions in this paper

Q1: Do you agree with the proposed changes to our Perimeter Guidance to show that a tool allowing a consumer to search and filter based on objective factors is not necessarily giving advice?

Q2: Do you agree that we should more closely align our Perimeter Guidance on mortgage advice with the Perimeter Guidance on advising on investments?

Q3: Do you agree with the way we have characterised the types of tools that already exist or could be developed in the mortgage market?

Q4: Do you agree that we should permit more interaction with customers before firms are required to give advice?

Q5: Do you agree with the examples of interactions that should not trigger the need to give advice?

Q6: Do you agree that we should remove the prescriptive detail on firms' execution-only policies?

Q7: Do you agree that we should give guidance to clarify that MCOB 4.8A.5R does not prevent a firm marketing their execution-only channel or pricing advised and execution-only sales differently?

Q8: Do you agree that we should change the process for using the internal rate switch exception so the list need only be re-sent if new products are added or interest rates or fees change in a way likely to be material to the customer's decision?

Q9: Do you agree that in cases where the customer approaches their existing lender to ask whether they can match an offer from a competitor, the firm need only present the relevant product to use the internal switch exception?

Q10: Do you agree that we should allow the execution-only disclosure to be given and recorded by audio or video?

Q11: Do you agree that we should allow the disclosure and positive election to be in separate documents or recordings?

Q12: **Do you agree that we should require advisers, if they do not recommend the cheapest suitable mortgage, to explain why they have not recommended a cheaper mortgage?**

Q13: **Do you agree that we should make these minor amendments?**

Q14: **Do you agree with our initial assessments of the impacts of our proposals on the protected groups? Are there any others we should consider?**

Annex 2
Cost benefit analysis

Introduction

1. FSMA, as amended by the Financial Services Act 2012, requires us to publish a cost benefit analysis (CBA) of our proposed rules. Specifically, section 138I requires us to publish a CBA of proposed rules, defined as 'an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made and an estimate of those costs and of those benefits'. Section 138I also provides that if, in our opinion, the costs or benefits cannot reasonably be estimated or it is not reasonably practicable to produce an estimate, the cost benefit analysis need not estimate them; in that case, the CBA must include a statement of our opinion and an explanation of it.

2. This CBA presents our analysis of the impacts of our proposed changes to our mortgage advice and selling standards. We also provide monetary values for the impacts where we believe we can reasonably estimate them and it is reasonably practicable to do so.

3. The CBA has the following sections:

- Problem and rationale for intervention
- Description of the intervention
- Baseline and key assumptions
- Costs
- Benefits

Problem and rationale for interventions

The harm

4. We set out 3 harms here:

- consumers are receiving advice when they do not want or require it
- products and tools that would be valuable to consumers looking to purchase a mortgage are not available
- consumers are buying mortgages that are not the cheapest (suitable) mortgage available to them

Advice provided without benefit to consumers

5. Since the Mortgage Market Review (MMR), there has been a significant increase in the proportion of mortgage sales that are advised. Up until around 2012 around 30% of new mortgage sales were execution only, ie they were not advised sales. After the MMR the proportion of execution only sales has declined to less than 5%.

6. Advice is not costless. The cost of providing advice is likely to vary significantly depending

on the characteristics of the consumers and their mortgage requirements. The harm here arises from the opportunity cost of the time of advisers providing advice that a consumer may not want or need. Providers of advice will also incur costs in monitoring and overseeing their advisers. These costs will be passed through to consumers and lead to higher prices.

7. It is difficult to estimate the costs of advice as other activities not directly linked to advice and suitability will be undertaken by the adviser at the same time as advice is being provided. However, we estimate that the activities related to advice take around 45-90 minutes, though this can take longer. In our thematic review FCA TR15/09 we found one provider where advice took 60-80 minutes. We use a wider range for our analysis.

8. Using information on salaries from Willis Towers Watson 2016 UK Financial Services Report, we assume an average salary for mortgage advisers to be around £31,000. Combining these two pieces of information, we estimate that advice for each consumer costs between £19 and £38 for firms to provide. We assume that the firm has 30% overheads for staff, there are 220 working days per year and 7 working hours per day. Where more experienced financial advisers provide mortgage advice, the costs would be higher.

9. In addition, the provision of advice will lead consumers to incur additional time costs in engaging in the advice or providing information to facilitate the advice. Arranging a time for the provision of advice may also make the mortgage process less timely and slower. This increases the risk that the purchase process is affected (for home purchase) or reduces the incentive for consumers to switch mortgages.

10. We note that many consumers want advice when purchasing a mortgage and find value in doing so. Our proposals will not prevent consumers from choosing to receive advice if they want it.

Products and tools for consumers are not available

11. Our Perimeter Guidance on mortgage advice says that giving generic information or advice may amount to giving regulated advice if it steers the customer towards one or more mortgages. Responding to the Mortgages Market Study (MMS), some mortgage lenders and potential market entrants told us that this prevents them from developing online tools that allow consumers to search and filter available mortgages.

12. This is because the filtering may result in one or a few mortgages being displayed. As the firm is not collecting information on the consumer's needs and circumstances, and does not want to be at risk of being treated as having given advice on suitability when they have not undertaken the steps necessary to do so, they do not provide this facility.

13. Consequently, there are fewer tools and help for consumers to choose appropriate mortgages. This is likely to make it harder for consumers to find the best value and the most suitable mortgage.

Consumers do not buy the best value mortgages

14. In our MMS, we found that for around 31% of intermediated sales there was a cheaper alternative available on the market for which the consumer was eligible. In two-thirds of these (21% overall) there was a cheaper alternative available through other intermediaries (ie excluding direct only mortgages). Additionally, in 13% of sales there was a mortgage available through the intermediary that was cheaper than the one chosen. See Chapter 7 in Occasional Paper 33 for a more in-depth description of this harm and how this estimate was caculated.

15. In addition, those with the lowest credit scores are more likely to choose poorer-value mortgages. We also see a sharp worsening of mortgage selection for those over the age of 60. With income, the pattern is less dramatic but shows that those with lower income also tend to do worse.

16. On average, the difference in borrowing cost for these mortgages sales where there was a cheaper alternative was around £550 per year over the introductory period of the mortgage (until the mortgage reverts to the Standard Variable Rate (SVR)).

Drivers of the harm

Regulatory failure

17. Firms tell us there are barriers associated with providing effective information and tools caused by our rules and guidance.

18. In addition to the issue with our Perimeter Guidance discussed above, many respondents to the interim report of the MMS told us that some consumers who would like to buy a mortgage on an execution-only basis find it difficult to do so. In part, this is because our rules require advice to be given in most interactive sales.

19. This means that some consumers are diverted from execution-only to an advised sale even if initially they only interact in ways unrelated to choosing a product. Firms gave us examples such as where consumers who phone up for help because they are struggling to upload their documents in an online execution-only purchase are then told to make an appointment with a mortgage adviser because they have now interacted with the firm.

20. Firms also told us that they are reluctant to invest in their execution-only sales channels because our rules suggest that we do not look favourably on this sales channel. This can mean execution-only sales channels are not as easy to use as elsewhere in financial services.

Lack of appropriate information and conflict of interest

21. Our MMS found that there is a lack of information on eligibility criteria and this leads to poorer choices of mortgage. Consumers are therefore unable to judge whether they have chosen or been recommend the best-value mortgage from the range of suitable mortgages.

22. Where eligibility criteria are not very transparent, a consumer or their intermediary can be less confident that the consumer will meet a provider's eligibility criteria and be accepted for a mortgage. One response to uncertainty about eligibility criteria is to prefer a lender the consumer or intermediary knows better (where familiarity leads to more confidence about acceptance).

23. In Occasional Paper 33, it was found that preferences for familiar lenders, among intermediaries, may partly explain poorer mortgage choices in terms of cost. It was also found that intermediaries may be reasonably good at picking a product that does not have a cheaper alternative among the lenders they are most familiar with (in 87% of sales). However, there are sometimes better value mortgage products among lenders they are less familiar with. So, intermediaries' preference for familiar lenders could lead to some of their consumers missing out on cheaper alternative mortgage products.

Description of the intervention

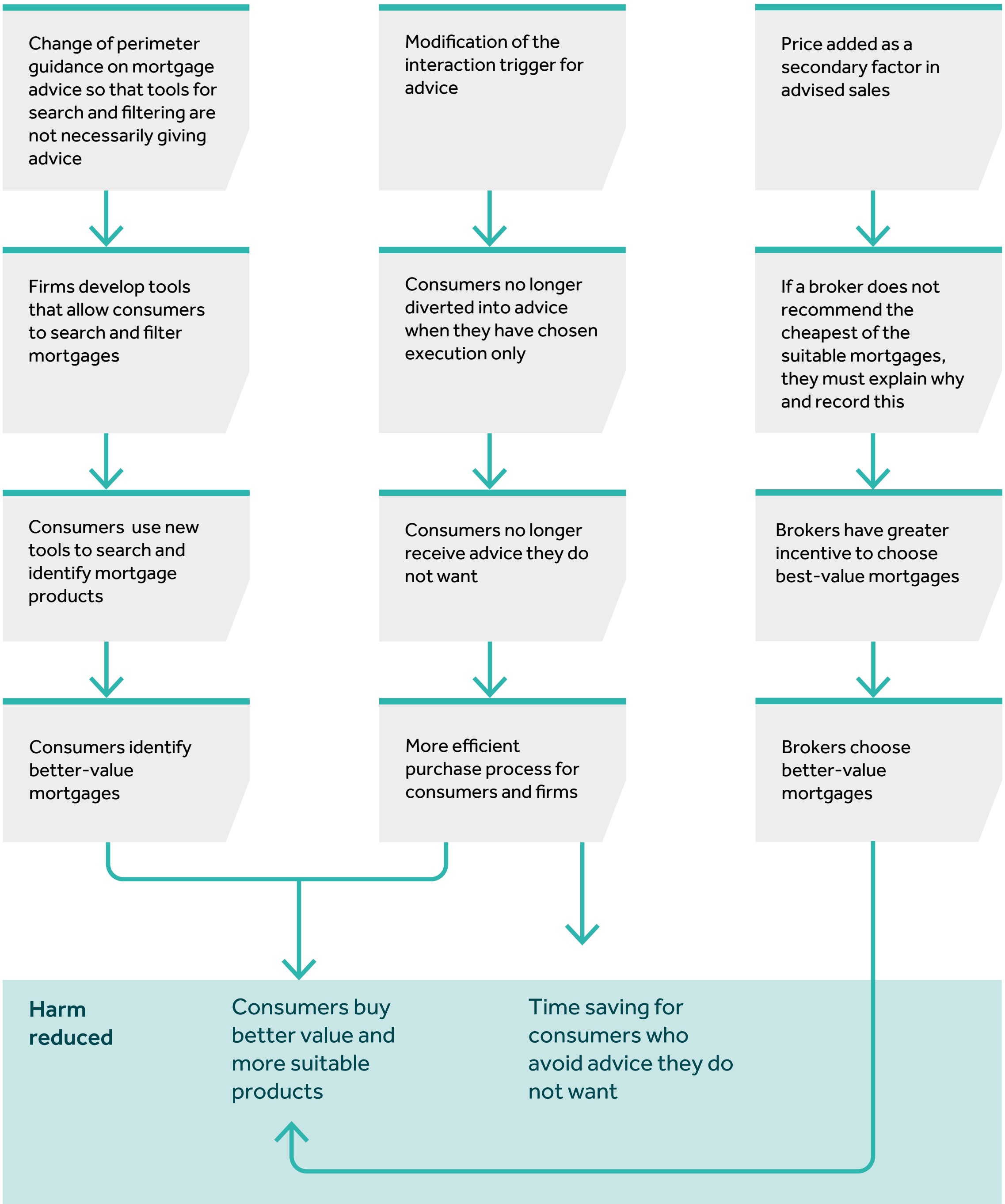
24. To address the 3 harms related to our advice rules and guidance we propose to:

- change our Perimeter Guidance on mortgage advice to make clear that tools that allow search and filtering based on objective criteria are not necessarily giving advice, and to more closely align to the recently updated guidance on advising on retail investments
- permit more interaction with customers before firms are required to give advice
- make other changes that may facilitate firms making their execution-only sales channels easier to use
- require advisers, if they recommend a mortgage which is not the cheapest of the mortgages that meet the customer's needs and circumstances, to explain why they have not recommended a cheaper mortgage
- make minor amendments to correct a cross-reference in MCOB 4.1.4R(1), and for the purposes of a gender-neutral drafting approach in the Handbook text

25. In this CBA, we assess the effect of the first 4 changes listed in the previous paragraph. The final typographical changes will not lead to costs to firms of more than minimal significance and therefore we are not required under FSMA (see Section 138L in FSMA, as amended by the Financial Services Act 2012) to undertake a CBA of these elements.

26. For the 3 key changes proposed in this CP, we set out the casual chain which shows how we expect the proposals to address the harm identified in the section above, 'Problem and rationale for intervention'.

Figure 2: Causal chain

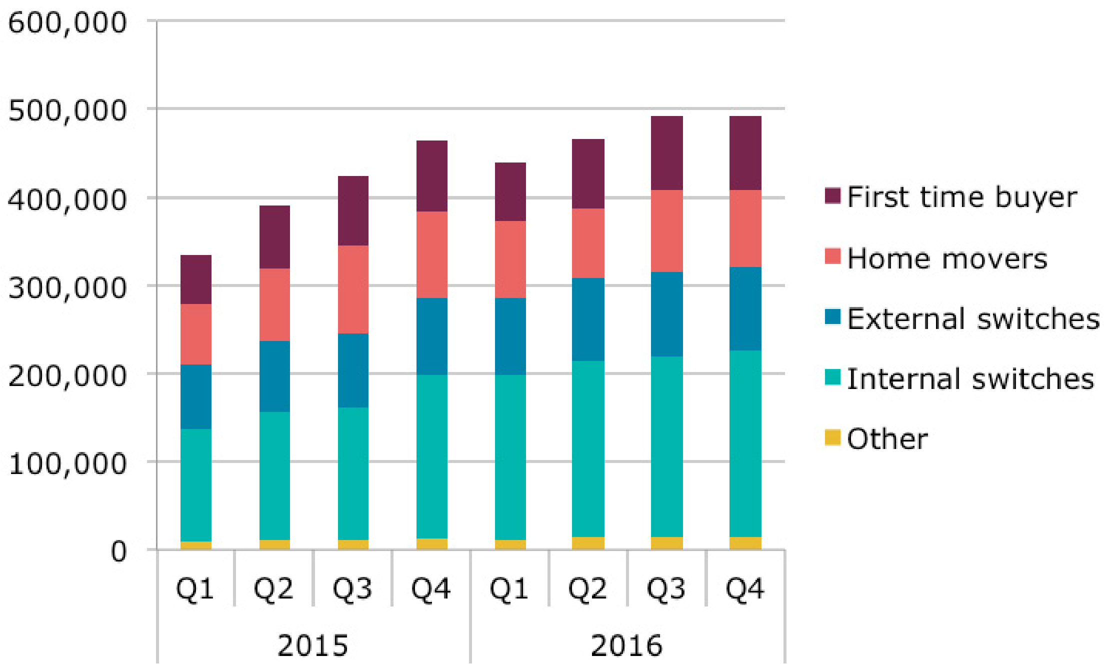


Baseline

27. We analyse the impacts of the policy against a baseline, or 'counterfactual' scenario, which describes what would happen in the absence of the proposed interventions. That is, we compare a 'future' under the policy, with an alternative 'future' without the policy.

28. Figure 3 below shows the number of mortgage transactions in 2015 and 2016. We see that there has been an increase in the number of transactions over the period. However, we see no reason why this increase would continue . We do not observe significant growth in the stock of mortgages (see Mortgage lending statistics - March 2019). We would not therefore expect further increases in new mortgage transactions. We note that if consumers choose longer term deals on new mortgages then there would be decline in the number of transactions. We therefore assume that there will be between 1.6m and 2.0m mortgage transactions a year in our baseline.

Figure 4: Number of mortgage transactions



29. Note: we do not have data on all mortgage sales including internal switching for more recent periods.

30. We might expect that as technology develops there will be innovation in the mortgage sector that helps consumers to search for, and buy, mortgages. We have seen the development of new tools in the market, but these new tools have yet to materially impact the market. It is difficult to predict how any innovation will affect the market. We therefore make the pragmatic assumption that the market does not change materially in our baseline as a result of technological changes and innovation, absent the changes we are proposing here (and our other changes arising from the MMS).

Summary

31. The table below sets out the costs and benefits of our proposals for changes to our mortgage advice and selling standards.

Table 1: Summary of the costs and benefits

	One-off / ongoing	Costs	Benefits
Firms (lenders and intermediaries)	One-off	Familiarisation and gap analysis - £1.9m	
	Ongoing	Costs of price checking and recording - £4.6-5.2m per year	Avoiding costs of advice - £2.7-11.8m More efficient mortgage sales process – Not quantified
Consumers	One-off		
	Ongoing		Time savings from avoiding advice - £0.0-2.6m per year Benefits from purchasing best-value mortgages - £100.1-114.4m per year More efficient and innovative mortgage sector - Not quantified

32. The ongoing benefits from avoiding the costs of advice consumers do not want and the benefits to consumers of purchasing cheaper mortgages significantly outweigh the costs.

Costs

Compliance costs

Familiarisation and gap analysis costs

33. We assume that both lenders and intermediaries will seek to understand the changes we are proposing. In total, there are around 4,100 firms that may be affected by our proposals. We assume that there are approximately 50 large firms, 220 medium firms and 3,840 small firms.

34. Most of these firms are intermediaries. We use standard assumptions to estimate these costs. We anticipate that there will be approximately 30 pages of policy documentation that firms will need to familiarise themselves with. Assuming that there are 300 words per page and a reading speed of 100 words per minute, it would take around 2 hours to read the policy documentation. It is further assumed that 20 compliance staff at large firms, 5 staff at medium firms, and 2 compliance staff at small firms read the document. Finally, the hourly compliance staff salary is assumed to be £57 at large firms, £61 at medium firms, and £44 at small firms, including 30% overheads.

35. Using these assumptions, we expect total one-off industry-wide costs of familiarisation of approximately £700,000.

36. We also expect lenders and intermediaries will undertake a legal review of the new requirements against current practices. We, again, use standard assumptions to estimate these costs. There are around 25 pages of legal instrument to review. It is assumed that 4 legal staff at the largest firms, 2 legal staff at medium firms and 1 member of legal staff at

small firms will review the legal instrument. It is further assumed that each legal staff member can review 50 pages of legal text per day. Finally, using data on salaries from the Willis Towers Watson UK Financial Services survey the hourly legal staff salary is assumed to be £67 at large firms, £67 at medium firms and £53 at small firms, including 30% overheads.

37. Using these assumptions, we estimate that the total one-off legal review costs would be £1.2m.

38. In total, we estimate one-off familiarisation and gap analysis costs of £1.9m.

39. We take a conservative approach in estimating these costs. We expect that where intermediaries are within a network some of this activity we be undertaken by the network. This would suggest that we have overestimated these costs.

Costs of price checking and recording

40. We propose that for advised sales, if the adviser is not recommending the cheapest of the suitable mortgages from their product range, they must explain why to the customer and record this.

41. This will create additional costs in the advice process. We would expect that many advisers are already recommending the cheapest product or only choosing more expensive products where there is a good reason for doing so. For these advisers and on these sales, we would not expect significant new costs.

42. However, advisers in many cases are choosing mortgages where there was an alternative mortgage available that was cheaper with none of its price elements (rates or fees) higher (i.e. the mortgage choice was dominated by a better value mortgage). We therefore expect a substantial proportion of advisers will incur greater costs on the sales they make.

43. To estimate these costs, we note that in the market study we found that 13% of intermediated sales are dominated by an alternative product that is available through the same intermediary (i.e. excluding products only available directly from lenders). A mortgage is considered 'dominated' if there is an alternative mortgage available that was cheaper with none of its price elements (rates or fees) higher. We therefore assume that 13% of advised sales through an intermediary are dominated and will be affected by our proposals.

44. There were approximately 700,000-800,000 intermediated, advised sales per year in 2015 and 2016.

45. We use a cost of adviser time of around £26 per hour. We assume an average salary for mortgage advisers to be around £31,000. We also assume 220 working days, 70 working hours and 30% overheads. We assume that for these sales, advisers take an additional 15 minutes of time. We think this is a reasonable amount of time to undertake this additional process. Advisers will be checked by second-line controls to check on compliance by providers. We do not expect that there will be a material increase in the costs of these checks. We note that we assume all sales have been increased by 15 minutes whereas we expect an increased in the time spent to occur in a fraction of sales. Hence, we are conservatively estimating the overall costs. They will use this time to either identify and sell the cheapest suitable mortgage from their product range or explain and record why this mortgage was not recommended.

46. Taken these together, we estimate the ongoing costs of the price checking and recording requirement to be £4.6-5.2m per year.

47. It is possible that if advisers choose different mortgages under our proposals on price checking and recording, there may be an increase in the time and associated cost in arranging these mortgages through advisers. That is, it takes intermediaries longer to process these alternative mortgages. We expect that any such costs will not be significant as we would not expect material differences in the time it takes an adviser to proceed with a sale for different lenders. Given we have estimated costs conservatively, we would expect these costs to be reflected in the costs estimated in the paragraph above.

48. We do not expect significant costs for direct sales. This is because the range of products sold directly by lenders is much narrower than for intermediaries. We would also expect that advisers in these firms would be familiar with their entire range.

49. We do not expect significant one-off costs from this change as the systems for advisers to record reason for mortgage choices already exist.

Indirect costs

50. The changes to the Perimeter Guidance and advice trigger may lead to new and innovative ways to sell mortgages to consumers. We are aware that some firms are already developing new tools to help consumers search for mortgages and we would expect this to accelerate under our proposals. This could result in a movement away from traditional intermediaries and the use of traditional advice, especially for firms that do not use more efficient processes or improve their customer proposition.

51. This change would impose costs on traditional intermediaries in the form of lower levels of sales. We note that those providers innovating would gain these new sales. We would expect these would net out (with benefits to consumers from a more efficient process). We might, however, expect some costs of the adjustment as the market evolves. It is difficult to predict with any certainty how the market will develop under our proposals (or under the baseline) in this regard. It is therefore not reasonably practicable to estimate these costs.

Costs to consumers

52. Our proposals are likely to lead to fewer consumers getting advice and more buying a mortgage execution-only instead. It is therefore possible that consumers would choose worse-value mortgages without the help and guidance of an adviser.

53. Our evidence suggests that this is highly unlikely to be a large concern as we are devising the rules to remove advice only where it is least likely to be making a difference. Our MMS found that advice had little impact on the average cost of the mortgage purchased for those consumers who would not have got advice had the MMR not been implemented. That is not to say that advice does not have an important role in the mortgage market for other consumers looking for a mortgage.

54. We also note that the changes made as part of the MMR did not seek to prevent consumers choosing to buy mortgages without advice and did not identify harm from consumers choosing to do so.

Benefits

Cheaper mortgages for consumers

55. This section assesses the benefits from the requirement for advisers to ensure that, if the adviser is not recommending the cheapest of the suitable mortgages from their product range, they must explain why and record this.

56. Benefits arise to consumers in cases where advisers recommend the cheapest suitable mortgage where previously they recommended a higher cost one.

57. The requirement for advisers to ensure that, if the adviser is not recommending the cheapest of the suitable mortgages from their product range, they must explain why to the customer and record this may deliver benefits to consumers if they buy cheaper mortgages as a result.

58. Our MMS found that around 13% of intermediary sales were dominated by products offered by lenders that receive most of the intermediary's business. This implies that there was an alternative product available through the intermediary that was better-value but it was not chosen.

59. We might expect at least some of these sales of dominated products to be for valid reasons. Some consumers will not select the cheapest suitable deal – for example, for convenience. Hence, we may overestimate the savings for consumers. We might expect that for home movers and first-time buyers especially other considerations might come into play. We would not expect, however, that a significant proportion of remortgagers would choose a significantly more expensive mortgage.

60. Advisers will only have to do something materially different under the rules if they are recommending a more expensive mortgage without a good reason. Consequently the benefits vary proportionally with costs and hence the overall proportionality stays the same even if we have overstated the benefits.

61. We assume, as we found in the MMS, that the average excess cost for consumers buying a dominated product was £550 over the introductory period of their mortgage. We also assume that the introductory rate lasts for two years. In reality, the average length of time on introductory rates will be longer than this and we are therefore underestimating the benefits to consumers.

62. Using our estimate that there are between 700,000 and 800,000 advised intermediated mortgage sales per year, we estimate that the interest savings for consumers are £100.1-114.4m per year (eg 700k*0.13*550*2=£100.1m).

63. We note that these savings could represent transfers from firms to consumers. The lower interest costs would mean lower profits for firms overall. However, at least some of these interest savings may arise from buying mortgages from more efficient providers.

Consumers avoid unnecessary advice

64. Enabling consumers to avoid getting advice when they do not want it will reduce the resource costs required to provide advice.

65. Excluding internal remortgages, currently around 97% of the 1-1.1m new mortgages sales are advised per year. We note the increase in number of mortgage sales from the range we used in the sections on Cheaper mortgages for consumers. This is because we have included advised direct sales in this analysis but did not in the previous analysis.

66. There is considerable uncertainty over the extent to which consumers would use execution-only rather than advice as a consequence of our proposal. We therefore estimate a range for the extent to which consumers would switch from advised sales.

67. Our MMR changes, in particular the interaction trigger for advice, led to an increase in the proportion of advised sales. The proportion of advised sales (excluding internal switches) that we observed in the mortgage market prior to the introduction of the MMR, was around 70%.

68. If we returned to the pre-MMR advice and selling standards this would suggest a 27 percentage points (ppt) reduction in the proportion of consumers receiving advice. However, our changes retain much of the MMR approach and there is uncertainty around the development of tools to help consumers choose and buy mortgages. To create a range to reflect the uncertainty, we estimate half of the reduction of returning to the pre-MMR standards ie 13.5ppts.

69. Using these estimates, and our estimate for the cost of advice, we estimate the savings to intermediaries to be £2.7-11.8m per year. We estimate by using a cost of advice of £19-38 and 13.9-27.8% of sales affected in combination with the number of sales of 1-1.1m.

70. We would expect that many of these resource savings will be passed on to consumers in the form of lower prices.

71. Additionally, we would expect that consumers would avoid having to spend time engaging with the advice process. However, we might expect that as they no longer receive advice, consumers undertake additional activity to replace the actions undertaken by their adviser.

72. This could result in an increase rather than a reduction in the costs to consumers. Consumers who choose to no longer receive advice under our proposals may already do some significant searching for a mortgage product, even though they currently receive advice. For those customers, choosing execution only may not lead to more time spent purchasing mortgages.

73. It is unclear whether consumers will gain any time from switching from advised to non-advised sales.

74. We assume that the maximum amount of time consumers could save from not receiving advice is the same as the maximum time spent by the adviser, ie 90 minutes. For the minimum amount of time saved, we assume that consumers might end up using the time no longer spent receiving advice now searching and identifying a mortgage themselves (and not saving any time). This creates a range of 0-90 minutes that consumers save by not receiving advice.

75. We value an individual's leisure time based on the Department for Transport's analysis and modelling. This provides an hourly value of £5.70 per hour (2018 prices).

76. Using these additional assumptions, we estimate the consumer time cost savings to be £0.0-2.6m per year.

More efficient and innovative mortgage sector

77. The changes we propose should facilitate innovation and make it easier for firms to develop tools to help consumers choose and buy a mortgage. We expect these changes to deliver significant benefits to consumers over time.

78. Innovation will bring efficiency to the mortgage sales process. Efficiency will lead to lower priced and better value products for consumers. Also, innovation and the development of tools will make it easier and simpler for consumers to search for and buy a mortgage. This should help to reduce the extent to which consumers overpay for mortgages, or buy mortgages that are unsuitable for their needs.

79. Given the inherent uncertainty in how the market will develop both under our baseline and under our proposals, it is not reasonably practicable to estimate these benefits.

Annex 3
Compatibility statement

Compliance with legal requirements

1. This Annex records the FCA's compliance with a number of legal requirements applicable to the proposals in this consultation, including an explanation of the FCA's reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).

2. When consulting on new rules, the FCA is required by section 138I(2)(d) FSMA to include an explanation of why it believes making the proposed rules is (a) compatible with its general duty, under s. 1B(1) FSMA, so far as reasonably possible, to act in a way which is compatible with its strategic objective and advances one or more of its operational objectives, and (b) its general duty under s. 1B(5)(a) FSMA to have regard to the regulatory principles in s. 3B FSMA. The FCA is also required by s. 138K(2) FSMA to state its opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.

3. This Annex also sets out the FCA's view of how the proposed rules are compatible with the duty on the FCA to discharge its general functions (which include rule-making) in a way which promotes effective competition in the interests of consumers (s. 1B(4)). This duty applies in so far as promoting competition is compatible with advancing the FCA's consumer protection and/or integrity objectives.

4. In addition, this Annex explains how we have considered the recommendations made by the Treasury under s. 1JA FSMA about aspects of the economic policy of Her Majesty's Government to which we should have regard in connection with our general duties.

5. This Annex includes our assessment of the equality and diversity implications of these proposals.

6. Under the Legislative and Regulatory Reform Act 2006 (LRRA) the FCA is subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). This Annex sets out how we have complied with requirements under the LRRA.

The FCA's objectives and regulatory principles: Compatibility statement

7. The proposals set out in this consultation are primarily intended to advance the FCA's operational objective to secure an appropriate degree of protection for consumers.

It aims to do this by giving consumers more choice in how they buy a mortgage. They should do this by making it easier to buy a mortgage online and/or on an execution-only basis. We think that these changes are proportionate and still deliver an appropriate degree of consumer protection.

8. The proposals also aim to advance the FCA's operational objective to promote effective competition in the interests of consumers. This consultation proposes to remove a barrier to the development of tools to allow consumers to search for and buy mortgages. This should increase competition in intermediation.

9. In preparing the proposals set out in this consultation, the FCA has had regard to the regulatory principles set out in s.1B and s.1C FSMA.

10. We consider these proposals are compatible with the FCA's strategic objective of ensuring that the relevant markets function well because they will help to clarify the boundary between information and advice. This should allow firms to develop services to meet a range of customer needs when buying a mortgage. For the purposes of the FCA's strategic objective, "relevant markets" are defined by s. 1F FSMA.

11. In preparing the proposals set out in this consultation, the FCA has had regard to the regulatory principles set out in s. 3B FSMA.

The need to use our resources in the most efficient and economic way

12. Our proposals are designed to be proportionate. They are based on feedback from firms and consumer groups about how to improve our regulation of mortgage advice and selling. We have also designed them so that they can be easily supervised and monitored through existing regulatory returns, in particular whether advice was given at point of sale in Product Sales Data 001.

The principle that a burden or restriction should be proportionate to the benefits

13. As discussed in 3.15, our advice and selling standards have limited execution-only sales more than was intended. We think that making it easier to access this sales channel while maintaining our overall approach to mortgage advice and selling is proportionate.

The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term

14. We have had regard to this principle and do not believe our proposals undermine it.

The general principle that consumers should take responsibility for their decisions

15. Our proposals give consumers more choice about how to buy a mortgage. This should enable them to take more responsibility for their decisions.

The responsibilities of senior management

16. We have had regard to this principle and do not believe our proposals undermine it.

The desirability of recognising differences in the nature of, and objectives of, businesses carried on by different persons including mutual societies and other kinds of business organisation

17. We recognise the different nature of mutual and other kinds of businesses. Our proposals should increase competition in intermediation. New means of intermediation may be of benefit to mutual organisations such as building societies who particularly rely on this distribution channel.

The desirability of publishing information relating to persons subject to requirements imposed under FSMA, or requiring them to publish information

18. We have had regard to this principle and do not believe our proposals undermine it.

The principle that we should exercise of our functions as transparently as possible

19. Our proposals have been developed following consultation on the Interim Report of the Mortgages Market Study. Feedback to this consultation has been incorporated into the design of the proposals.

Expected effect on mutual societies

20. The FCA does not expect the proposals in this paper to have a significantly different impact on mutual societies or present them with any more or less of a burden than other authorised persons.

Equality and diversity

21. We are required under the Equality Act 2010 in exercising our functions to 'have due regard' to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Act, advance equality of opportunity between persons who share a relevant protected characteristic and those who do not, and foster good relations between people who share a protected characteristic and those who do not.

22. As part of this, we ensure the equality and diversity implications of any new policy proposals are considered. The outcome of our consideration in relation to these matters in this case is stated in paragraph 5 our Equalities Impact Assessment.

Legislative and Regulatory Reform Act 2006 (LRRA)

23. We have had regard to the principles in the LRRA for the parts of the proposals that consist of general policies, principles or guidance and consider that our proposals are:

- transparent – we are following an established consultation process in making these rules
- accountable – we are seeking feedback on this CP on whether stakeholders agree with our proposed approach
- proportionate – we have carefully deliberated on our approach and believe our proposals are proportionate. We have sought wherever possible to minimise costs while enabling consumers to benefit
- consistent – our proposed approach applies in a consistent way and brings Perimeter Guidance on mortgage advice into line with that for retail investments
- targeted only at cases in which action is needed – our proposed approach is targeted only at harms identified through the Mortgages Market Study

24. We have had regard to the Regulators' Code for the parts of the proposals that consist of general policies, principles or guidance and consider that the proposals will be effective in helping firms understand and meet regulatory requirements more easily, in a manner that leads to improved choice for consumers.

Annex 4
Equalities Impact Assessment

1. When exercising our functions, we are required under the Equality Act 2010 to 'have due regard' to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Act, advance equality of opportunity between persons who share a relevant protected characteristic and those who do not, and to foster good relations between people who share a protected characteristic and those who do not. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race (which includes colour, nationality, and ethnic or national origins), religion, sex and sexual orientation.

2. In discharging this duty, we ensure the equality and diversity implications of any new policy proposals are considered. This annex sets out the results of our initial assessment, explains the potential equality and diversity impacts of our proposals where we have identified them and (where relevant) sets out any steps we have taken (or will take) to minimise them.

3. Our changes would affect almost all mortgage consumers. We know some things about them from Financial Lives and Product Sales Data. There has been a decrease in the number of first time-buyers aged 25 and under. Owner occupiers, including those buying a property with a mortgage, are more likely to have high incomes and investible assets. They are likely to be older and have greater confidence in managing their finances.

4. Consultation responses to our question in the interim report on which groups of consumers should have more choice in whether to take advice generally said that we should not take a 'groups' approach, as this was a blunt tool. For example, remortgagers might be more likely to be able to choose a suitable mortgage than first time buyers, but there would be some first-time buyers who could buy without advice and some remortgagers who could not. We agreed with this and have not taken a 'groups' approach.

5. Most of our proposals aim to make it easier to buy a mortgage online. Younger consumers are more interested in buying a mortgage online. A survey by Which? found that around a third of those in their survey would consider using an online broker. It was younger borrowers who were most attracted to online advice, with 68% of those aged 18-24 saying they would consider it compared with 35% of those in their sixties. These proposals, therefore, may have a positive impact on younger consumers. In addition, some disabled people may find it easier to transact online than by telephone or in person. These proposals, therefore, may also have a positive impact on disabled consumers. We don't think our proposals to make it easier to buy a mortgage online will have negative impacts on any groups with protected characteristics.

6. We do not think our proposal to require an adviser, if they recommend a mortgage which is not the cheapest of the mortgages that meet the customer's needs and circumstances, to explain why they have not recommended a cheaper mortgage will have a differential impact on groups with protected characteristics.

Q14: **Do you agree with our initial assessments of the impacts of our proposals on the protected groups? Are there any others we should consider?**

Annex 5
Abbreviations used in this paper

CBA	Cost Benefit Analysis
CP	Consultation Paper
FAMR	Financial Advice Market Review
FSMA	Financial Services and Markets Act (2000)
LRRA	Legislative and Regulatory Reform Act 2006
MMR	Mortgage Market Review
MMS	Mortgages Market Study
SVR	Standard Variable Rate

Appendix 1
Draft Handbook text

MORTGAGES (ADVICE) 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 [*date*].

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.

Amendments to material outside the Handbook

E. The Perimeter Guidance manual (PERG) is amended in accordance with Annex B to this instrument.

Citation

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

By order of the Board
[*date*] 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.

4 Advising and selling standards

4.1 Application

…

What?

…

4.1.4 R (1) *MCOB* 4.4A (Initial disclosure requirements) applies only in relation to varying the terms of a *regulated mortgage contract* entered into by the *customer* in any of the following ways:

…

…

…

4.7A Advised sales

4.7A.1 G …

(3) The *rules* at *MCOB* 4.8A also provide that advice must be given wherever the sales process involves spoken or other interactive dialogue (except for *high net worth mortgage customers*, *professional customers* and loans solely for a business purpose), unless that spoken or other interactive dialogue is of a sort described by *MCOB* 4.8A.7AR. They do not prohibit the giving of pre-contract or preliminary information which does not amount to advice to the particular *customer*, but ~~means~~ mean that advice must be given before a *firm* enters into or arranges a *regulated mortgage contract*, or variation of such contract, unless (where the dialogue is not of a sort described by *MCOB* 4.8A.7AR) the requirements ~~there~~ of the various exceptions in *MCOB* 4.8A are satisfied. *Firms* may wish to refer to *PERG* (particularly *PERG* 4.6) for guidance on the regulatory perimeter in relation to *advising on home finance transactions*.

…

…

Cost of the mortgage

4.7A.23A R (1) This *rule* applies if the *firm*'s product range includes more than one *regulated mortgage contract* that is appropriate to the needs and circumstances of the *customer* (see *MCOB* 4.7A.5R and 4.7A.6R).

(2) If:

(a) the *firm* advises the *customer* to enter into a particular *regulated mortgage contract*; and

(b) that *regulated mortgage contract* is not the cheapest of those contracts in the *firm*'s product range which are appropriate to the needs and circumstances of the *customer*;

the *firm* must explain to the *customer* why it is advising the *customer* to enter into that *regulated mortgage contract* rather than any other cheaper *regulated mortgage contract* in the *firm*'s product range which is appropriate to the needs and circumstances of the *customer*.

(3) For the purposes of this *rule*:

(a) one *regulated mortgage contract* ("contract A") is cheaper than another ("contract B") if the total amount payable under contract A in respect of the relevant period is less than the total amount payable under contract B in respect of the relevant period;

(b) the "total amount payable" means:

(i) the aggregated monthly payments; and

(ii) includes any product fee or arrangement fee if the *customer* proposes to pay that fee directly rather than add it to the sum advanced under the contract (and such a fee must be treated in the same way for contract A and contract B when comparing the two contracts);

(c) the "relevant period" means:

(i) any discounted or introductory period under contract A; else

(ii) the term of contract A;

(d) monthly payments should be calculated on the assumption that there is no variation to the interest rate that would apply if the *regulated mortgage contract* were to be entered into immediately, unless the contract expressly varies the interest rate (in which case, the monthly payments should be calculated by reference to rates specified in the contract in relation to the relevant periods).

…

Record keeping

4.7A.25 R (1) A *firm* must make and maintain a record:

…

(b) …; ~~and~~

(c) of the *customer*'s positive choice in *MCOB* 4.6A.2R (Rolling up of fees or charges into loan) where applicable; and

(d) of the explanation given under *MCOB* 4.7A.23AR where applicable.

(2) The records in (1) must be retained for a minimum of three years from the date on which the advice or explanation was given or, in the case of (1)(c), the making of the choice.

4.8A Execution-only sales

Scope and application of this section

…

4.8A.2 G Subject to certain limited exceptions, where the rules in *MCOB* 4.8A apply to a *firm* they restrict *execution-only sales* (which term is defined to include variations of existing contracts) to cases where:

(1) there is no spoken or other interactive dialogue between the *firm* and the *customer* during the sale; or

…

(2A) if there is spoken or other interactive dialogue between the *firm* and the *customer* during the sale, the *firm*'s contribution to the dialogue is limited to factual information about a *regulated mortgage contract* (provided that it is not personalised to the *customer*), the process of applying for one, the processing of an application, or the making of arrangements related to such matters; or

…

4.8A.3 G Interactive dialogue includes SMS, mobile instant messaging, email and communication via social media sites; this list is not exhaustive. Where a sale is carried out entirely on the internet, a *firm* merely permitting the *customer* to input details about the matters specified in *MCOB* 4.8A.14R(1), (2) or (3) in order to select from the *firm*'s product range the *regulated mortgage contract* ~~he wishes~~ they wish to purchase, or the variation ~~he wishes~~ they wish to enter into, would not be engaging in interactive dialogue. ~~*Firms* are reminded that, if this process steers the *customer* towards any one or more of the products offered by it, so as to constitute advice, the requirements of *MCOB* 4.7A will apply.~~

The customer's best interests

…

4.8A.6A G *Firms* will not be treated as having breached *MCOB* 2.5A.1R or *MCOB* 4.8A.5R merely because they market *execution-only sales* or apply different pricing to *execution-only sales* from that applied to advised sales, provided that they act in a manner consistent with their obligations under the *regulatory system*, including the requirements of this section.

Cases where execution-only sales are not permitted

4.8A.7 R A *firm* must not enter into or *arrange* an *execution-only sale* for a *regulated mortgage contract* if:

…

(3) there is spoken or other interactive dialogue between the *firm* and the *customer* at any point during the sale, except as described by *MCOB* 4.8A.7AR; or

…

4.8A.7A R The *firm* may carry on a spoken or other interactive dialogue with the *customer*, provided that the content of the *firm*'s contribution to the dialogue is limited to:

(1) the provision of factual information to the *customer* about:

(a) a *regulated mortgage contract*, provided that the information about the contract is not personalised to the *customer*;

(b) the process of applying for a *regulated mortgage contract*; or

(c) the processing of an application for a *regulated mortgage contract*; or

(2) the making of practical arrangements related to such matters.

4.8A.7B G (1) *MCOB* 4.8A.7AR allows some interaction with a *customer* without the dialogue triggering the need for the *firm* to give advice in compliance with *MCOB* 4.7A (Advised sales).

(2) *MCOB* 4.8A.7AR would, for example, permit a *firm* to provide generic information to a *customer* in response to a telephone query about the *firm*'s products, fees and charges, about processes and timescales, about how to complete an application, or about the progress of the application. But information about a *regulated mortgage contract* which is personalised to the *customer* is not permitted, for example giving an estimate of the monthly payment due in respect of the amount that the *customer* wishes to borrow under the product they wish to take: giving such information would mean the *firm* would need to comply with *MCOB* 4.7A. Similarly, if the interaction with the *customer* constitutes or includes advice or a recommendation (see *PERG* 4.6), the sale cannot be an *execution-only sale* and the *firm* would need to comply with *MCOB* 4.7A.

(3) Examples of spoken or other interactive dialogue which are or are not permitted under *MCOB* 4.8A.7AR include:

Providing the *customer* with copies of product literature, or weblinks to such literature	This would be permitted, if the provision is in response to a request from a *customer* who has identified the main features of the mortgage they want and is accompanied by an indication that the products described in the literature all have those features (see *PERG* 4.6.15G(6)).
Listing the current fixed and variable rates on offer	This would be permitted.
Explaining the advantages and disadvantages of fixed rate and variable rate mortgages	This would be permitted if done in purely generic terms, provided that the explanation does not itself constitute advice (see *PERG* 4.6.15G(2) and 4.6.16G) which would prevent the sale from proceeding as an *execution-only sale*. Where the explanation is couched in the terms of the *customer*'s circumstances, it is personalised to the *customer*. As such, the interaction is not of a sort permitted by *MCOB* 4.8A.7AR, the sale cannot be an *execution-only sale* and the *firm* would need to comply with *MCOB* 4.7A.

Giving the *customer* an indication of the monthly cost of a *regulated mortgage contract*	This would be permitted, if it were in the form of a generic example, including by way of comparison of two mortgages. But this would not be permitted if it were an indication personalised to the *customer*, for example where the indication is of the monthly cost in respect of the amount which the *customer* wishes to borrow over the term for which the *customer* wishes to borrow it; such an interaction will trigger the need for advice and the *firm* would need to comply with *MCOB* 4.7A.
Talking the *customer* through a decision tree	This would not be permitted. Although the question of whether decision trees constitute advice is discussed at *PERG* 4.6.15G, the act of talking the *customer* through such a decision-making process is likely to involve doing more than merely providing the *customer* with factual information; as that interaction is not of a sort permitted by *MCOB* 4.8A.7AR, the sale cannot be an *execution-only sale* and the *firm* would need to comply with *MCOB* 4.7A.
Responding to a query about how to fill out an application form (for example: telling a *customer* what supporting documents are acceptable as proof of address or identity and how to supply them, or how to calculate and report their income or expenditure)	This would be permitted, as it is information about the process of applying for a mortgage and the making of arrangements (how to supply supporting evidence) related to that process.
Discussing the use of panel solicitors	This would be permitted, provided such discussions are limited to factual information about, for example, whether or not a particular firm of solicitors is on the lender's panel and what

	legal fees are or are not included in the mortgage offer.
Taking credit card details by phone to cover payment of a required valuation	This would be permitted, as it is about the making of practical arrangements related to the processing of an application for a *regulated mortgage contract*.
Rescheduling a property valuation	This would be permitted because the interaction is about the making of arrangements related to the processing of the application.
Calling the *customer* to tell them that an application for a *regulated mortgage contract* needs to be submitted in the next two *days* if a new (higher) interest rate is not to apply	This would be permitted, if it were in the form of a generic communication about the *firm* planning to change its product offering or interest rates in the near future, and indicating the deadline for applying for the current product. However, a communication about a particular *regulated mortgage contract* that the *firm* knows or reasonably suspects the *customer* may wish to apply for, and the product it will be replaced with or the rate that will apply if an application for such a product is received after a particular date, would not be permitted as this is information which is personalised to the *customer*.

…

Exception: rate switches and other variations

4.8A.10 R (1) *MCOB* 4.8A.7R does not apply in the case of a variation of a *regulated mortgage contract*, provided that:

(a) …; ~~and~~

(b) …; and

(c) where the *firm* has added to the range of products it offers since it presented its products to the *customer* for the purpose of (b), the *firm* presents its new range of products to the *customer* in a *durable medium* before the *customer* submits an application.

(2) …

(3) Where a *customer* informs their existing *mortgage lender* that they are considering redeeming their *regulated mortgage contract* by refinancing it with a *regulated mortgage contract* through another *mortgage lender*, *MCOB* 4.8A.7R(3) does not apply to the existing *mortgage lender* provided that:

(a) the *customer* specifies to the existing *mortgage lender* at least the following information in relation to the replacement *regulated mortgage contract*:

(i) the rate of interest;

(ii) the interest rate type (that is, whether fixed, variable or some other type);

(iii) the length of the term required by the *customer*;

(iv) the sum the *customer* wishes to borrow; and

(v) whether the customer wants an *interest-only mortgage* or a *repayment mortgage*; and

(b) the existing *mortgage lender* presents to the *customer*, in a *durable medium*, those of its products for which the *customer* is eligible and which match the features the *customer* specifies.

4.8A.11 G …

(3) ~~*Firms* are reminded that, if their presentation in *MCOB* 4.8A.10R(1)(b) has (either explicitly or implicitly) steered the *customer* towards any one or more of the products offered by them such as to constitute advice, the requirements of *MCOB* 4.7A will apply.~~ [deleted]

(4) Where a *firm*'s range of *regulated mortgage contracts* has changed, for example where a new *regulated mortgage contract* has been added since the *firm* presented its list of *regulated mortgage contracts* to the *customer*, the sale may proceed as an *execution-only sale* only if the *firm* re-presents the new list. For example, if the *firm* now offers a 3 year fixed deal where previously they only offered 2 year or 5 year fixed deals, the *firm* would need to re-present the new list. But where the *firm* no longer offers a particular *regulated mortgage contract*, the *firm* does not need to re-present the list for the purposes of *MCOB* 4.8A.10R(4).

(5) *Firms* are reminded of *Principles* 6 and 7: that is, that they must pay due regard to the best interests of their *customers* and treat them fairly; and that they must pay due regard to the information needs of their *clients*, and communicate information to them in a way which is clear, fair and not misleading. Where features of a product have changed in such a way that the product is in effect no longer recognisable as the same product, *firms* should re-present the new list of products. Similarly, *firms* should re-present the new list of products where there is any change to interest rates, fees or other charges which is likely to be material to the *customer*'s decision as to whether or how to vary a *regulated mortgage contract*.

…

Requirements for execution-only sales

4.8A.14 R A *firm* must not enter into or arrange an *execution-only sale* for a *regulated mortgage contract* unless, except as provided in *MCOB* 4.8A.15R:

…

(4) the *customer* has been informed, either clearly and prominently and in a *durable medium* or in an oral statement that is audio or video recorded (after providing the information in (1), (2), or (3), where that is required, and with the information required by this paragraph being separate from any other information or contractual documentation):

…

and in either case that the *customer* will not benefit from the protection of the rules (in *MCOB* 4.7A) on assessing suitability. In any case where there is spoken dialogue between the *firm* and the *customer* at any point during the sale, other than dialogue of a sort permitted by *MCOB* 4.8A.7AR, the *firm* must ~~also~~ provide this information orally (even if it also provides it in a *durable medium*); and

(5) once the *customer* has been provided with the information in (4), in any case where there is spoken or other interactive dialogue between the *firm* and the *customer* at any point during the sale, ~~he~~ the *customer* has confirmed~~,~~ in writing~~,~~ to the *firm*, or has confirmed orally to the *firm* (and that confirmation is audio or video recorded), that ~~he is~~ they are aware of the consequences of losing the protections of the *rules* on assessing suitability and ~~is~~ are making a positive election to proceed with an *execution-only sale*. ~~The written confirmation must be in the same document as the information in *durable medium* in (4), which must be separate from any other information or contractual documentation.~~

…

4.8A.16 A | G | The confirmation required by *MCOB* 4.8A.14R(5) need not be in the same document or recording as the information required by *MCOB* 4.8A.14R(4).

~~Managing execution-only sales~~

4.8A.17 R ~~A *firm* which intends to transact *execution-only sales* in *regulated mortgage contracts* must have in place and operate in accordance with a clearly defined policy which:~~

~~(1)~~ ~~sets out the amount of business the *firm* reasonably expects to transact by way of *execution-only sales* and the steps to be taken by the *firm* if that business exceeds the expected levels; and~~

~~(2)~~ ~~sets out its processes and procedures for ensuring compliance with the rules in *MCOB* 4.8A; in particular:~~

~~(a)~~ ~~how it will ensure in every case that, before proceeding with an *execution-only sale* it has obtained (where required) a voluntary and informed positive election from the *customer* in order to comply with *MCOB* 4.8A.14R(5);~~

~~(b)~~ ~~how it will ensure in every case that it acts in compliance with *MCOB* 2.5A.1R and *MCOB* 4.8A.5R (The customer's best interests), including not encouraging a *customer* to enter into a *regulated mortgage contract* (or variation) as an *execution-only sale*; and~~

~~(c)~~ ~~how it will identify whether a *customer* meets the definition of *high net worth mortgage customer* or *professional customer*, if it will offer *execution-only sales* to those customers; and~~

~~(3)~~ ~~includes the arrangements for monitoring and auditing compliance with the policy, processes and procedures.~~

[deleted]

Record keeping

4.8A.18 R (1) Whenever a *firm* enters into or arranges an *execution-only sale* for a *regulated mortgage contract*, it must make and maintain a record of:

…

(b) the provision of the information ~~in *durable medium*~~ in *MCOB* 4.8A.14R(4);

…

…

(3) ~~A *firm* must keep an adequate and up-to-date record of the policy in *MCOB* 4.8A.17R, where such policy is required by that *rule*. When the policy is changed, a record of the previous policy must be retained for one year from the date of change.~~ [deleted]

…

TP 4 Other Transitional Provisions

(1)	(2) Material to which the transitional provisions applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provisions: coming into force
…	…	…	…	…	…
4	*MCOB* 4.8A.18	R	Nothwithstanding the deletion of *MCOB* 4.8A.18R(3) on [*date*], a *firm* must retain an adequate record of: (1) the policy required by *MCOB* 4.8A.17R, in the form in which that policy had effect immediately before [*date of deletion of MCOB 4.8A.18R(3)*], for one year from that date; and (2) any previous policy which was in force in the period of one year ending on that date, for one year from the date on which that policy came into effect.	[*date these rules come into force*] to [*date 12 months later*]	26 April 2014

…

Sch 1 Record keeping requirements

…

1.3G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
…	…	…	…	…
MCOB 4.7A.25R(1)(d)	Suitability of *regulated mortgage contracts*	An explanation of why the *firm* has not recommended a cheaper *regulated mortgage contract*	When explanation given	Three years
…	…	…	…	…
MCOB 4.8A.18R(1)(b)	*Execution-only sales* of *regulated mortgage contracts*	The warning to the *customer* ~~in a *durable medium*~~ regarding ~~his~~ their lack of protection of the rules on assessing suitability	The date a *regulated mortgage contract* was entered into or *arranged*	Three years
…	…	…	…	…
~~*MCOB* 4.8A.18R(3)~~	~~*Execution-only sales* of *regulated mortgage contracts*~~	~~The *firm*'s policy for managing *execution-only sales*~~	~~When the policy is made~~	~~One year from when the policy is changed~~
…	…	…	…	…

Annex B

Amendments to the Perimeter Guidance manual (PERG)

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

4 Guidance on regulated activities connected with mortgages

4.6 Advising on regulated mortgage contracts

Definition of 'advising on regulated mortgage contracts'

…

4.6.4 G …

(3) *PERG* 8.25 ~~(~~(Advice must relate to an investment which is a security or contractually based investment) to ~~*PERG* 8.29 (Advice must relate to the merits (of buying or selling a particular investment)~~ *PERG* 8.31 (Exclusions for advising on investments) will be relevant to any *person* who may be advising on other forms of investment at the same time as ~~he advises~~ they advise on *regulated mortgage contracts*; this includes, for example, a *person* advising on the merits of using a particular endowment policy or *ISA* as the means for repaying the capital under an *interest-only mortgage*.

Advice must relate to a particular regulated mortgage contract

4.6.5 G Advice will come within the *regulated activity* in article 53A of the *Regulated Activities Order* only if it relates to a particular *regulated mortgage contract* (or several different *regulated mortgage contracts*). ~~The question is whether a recommendation is made to a *customer* which either explicitly or implicitly steers the *customer* to a particular *regulated mortgage contract* because of its features.~~ Generic or general advice is not covered: examples of generic advice are shown in *PERG* 4.6.7G (but see *PERG* 4.6.7AG as well). Generic or general advice may, however, be a *financial promotion* (see *PERG* 8.4).

4.6.5A G *PERG* 4.6.21G to 4.6.25BG includes material about guiding a *person* through a decision tree.

4.6.6 G Advice relates to a particular contract if it recommends that a *person* should take out a mortgage with ABC Building Society without (expressly or by implication) specifying any particular ABC Building Society mortgage because it ~~steers the customer towards~~ is advice on the merits of specific identifiable mortgages and ~~away from~~ compared to all others. The advice is essentially saying that there is a feature of each individual ABC Building Society mortgage that makes it better than a mortgage from any other lender.

Advice may be regulated even though it relates to more than one possible mortgage. Advice also relates to a particular contract if it recommends that a *person* should not take out a mortgage with ABC Building Society.

4.6.7 G Typical recommendations and whether they will be regulated as advice under article 53A of the *Regulated Activities Order*

This table belongs to *PERG* 4.6.5G and *PERG* 4.6.6G.

Recommendation	Regulated or not?
I recommend you take out the ABC Building Society 2 year fixed rate mortgage at 5%.	Yes. This is advice ~~which steers the borrower in the direction of~~ on a particular mortgage which the borrower could enter into.
I recommend you do not take out the ABC Building Society 2 year fixed rate mortgage at 5%.	Yes. This is advice ~~which steers the borrower away from~~ on a particular mortgage which the borrower could have entered into.
I recommend that you take out either the ABC Building Society 2 year fixed rate mortgage at 5% or the XYZ Bank standard variable rate mortgage.	Yes. This is advice ~~which steers the borrower in the direction of~~ on more than one particular mortgage which the borrower could enter into.
…	…
I suggest you change (or do not change) your current mortgage from a variable rate to a fixed rate.	~~No in respect of the advice about rate type, as this does not steer the borrower in the direction of a particular mortgage which the borrower could enter into.~~ Yes. This is advice in respect of the advice about varying the terms of the particular mortgage that the borrower had already entered into.
I suggest you take out (or do not take out) a variable rate mortgage.	No. This is not advice ~~which steers the borrower in the direction of~~ on a particular mortgage which the borrower could enter into.
I recommend you take out (or do not take out) a mortgage.	No. This is not advice ~~which steers the borrower in the direction of~~ on a particular mortgage which the borrower could enter into.

I would always recommend buying a house and taking out a mortgage as opposed to renting a property.	No. This is an example of generic advice which ~~does not steer the borrower in the direction of~~ is not advice on a particular mortgage that ~~he~~ the *borrower* could enter into.
…	…

4.6.7A G (1) Although giving generic advice is generally not a *regulated activity*, if it is given in the course of or in preparation for a *regulated activity* it can form part of that *regulated activity*.

(2) For example, if a *firm* gives generic advice (for instance about the merits of a fixed rate mortgage rather than a variable rate mortgage) and then goes on to identify a particular fixed rate mortgage, the generic advice will form part of the *regulated activity* of *advising on regulated mortgage contracts*.

(3) Another example is a *firm* that provides generic advice to a *customer* or a potential *customer* prior to or in the course of carrying on the *regulated activity* of *arranging regulated mortgage contracts* for the *customer*. That generic advice is part of that *regulated activity* of *arranging (bringing about) deals in investments*.

4.6.8 G ~~Generic or general advice will not fall under article 53A. Examples of generic advice are shown in *PERG* 4.6.7G.~~ [deleted]

4.6.9 G ~~In the *FCA*'s view, guiding a *person* through scripted questions or a decision tree should not, of itself, involve advice within the meaning of article 53A (it should be generic advice). But the combination of advice, which in isolation may properly be considered generic, with the identification of a particular or several particular *regulated mortgage contracts* may well, in the *FCA*'s view, cause the person to be advising on regulated mortgage contracts; the *FCA* considers that it is necessary to look at the process as a whole; this is considered in more detail, in the context of scripted questioning, in *PERG* 4.6.22G (Scripted questioning (including decision trees)).~~ [deleted]

Advice given to a person in ~~his~~ their capacity as a borrower or potential borrower

…

Advice or information

4.6.13 G In the *FCA*'s view, advice requires an element of opinion on the part of the adviser ~~which steers or is intended to steer a borrower or potential borrower in the direction of one or more particular mortgages~~. In effect, it is a recommendation as to a course of action. Information, on the other hand, involves objective statements of facts and figures.

4.6.14 G (1) In general terms, simply giving ~~balanced and neutral~~ information without making any comment or value judgement on its relevance to decisions which a borrower may make is not advice.

(2) The provision of purely factual information does not become regulated advice merely because it feeds into the *customer*'s own decision-making process and is taken into account by them.

(3) Regulated advice includes any communication with the *customer* which, in the particular context in which it is given, goes beyond the mere provision of information and is objectively likely to influence the *customer*'s decision whether or not to enter into a particular *regulated mortgage contract* or to vary an existing *regulated mortgage contract*.

(4) A key to the giving of advice is that the information:

(a) is either accompanied by comment or value judgement on the relevance of that information to the *customer*'s decision; or

(b) is itself the product of a process of selection involving a value judgement so that the information will tend to influence the decision.

(5) Advice can still be regulated advice if the *person* receiving the advice:

(a) is free to follow or disregard the advice; or

(b) may receive further advice from another *person* before making a final decision.

4.6.15 G Information relating to entering into *regulated mortgage contracts* may often involve one or more of the following:

…

(3) ~~the production of scripted questions for the borrower to use in order to exclude options that would fail to meet his requirements; such questions may often go on to identify a range of *regulated mortgage contracts* with characteristics that appear to meet the borrower's requirements and to which he might wish to give detailed consideration (scripted questioning is considered in more detail in *PERG* 4.6.21G to *PERG* 4.6.25G (Scripted questioning (including decision trees));~~ [deleted]

…

4.6.16 G In the *FCA*'s opinion, however, such information ~~is likely~~ may take on the nature of advice if the circumstances in which it is provided give it the force of a recommendation ~~as described in *PERG* 4.6.10G. Examples of situations~~

~~where information provided by a person ('P') are likely to take the form of advice are given below~~. For example:

(1) ~~P provides~~ a *person* may provide information on a selected, rather than balanced ~~and neutral~~, basis that would tend to influence the decision of the borrower; and~~. This may arise where P offers to provide information about mortgages that contain features specified by the borrower but then exercises discretion as to which mortgages to offer to the borrower.~~

(2) ~~P~~ a *person*, as a result of going through the sales process, may ~~discusses~~ discuss the merits of one *regulated mortgage contract* over another, resulting in advice to enter into or not enter into a particular one.

4.6.16A G A key question is whether an impartial observer, having due regard to the regulatory regime and guidance, context, timing and what passed between the parties, would conclude that what the adviser says could reasonably have been understood by the *customer* as being advice.

4.6.16B G An explicit recommendation to enter into a particular *regulated mortgage contract* is likely to be advice. However, something falling short of an explicit recommendation can be advice too. Any significant element of evaluation, value judgement or persuasion is likely to mean that advice is being given.

4.6.16C G (1) A *person* can give advice without saying (or implying) categorically that the *customer* should enter into a particular *regulated mortgage contract*. The adviser does not have to offer a definitive recommendation as to whether the *customer* should enter into that particular *regulated mortgage contract*.

(2) For example, saying the following can still be advice:

(a) "this regulated mortgage contract is a very good deal but it is your decision whether or not to enter into it"; or

(b) "this regulated mortgage contract is a very good deal but I am going to leave it to you to decide because I don't know how important it is to you to have certainty about your monthly mortgage payments".

(3) The examples in (2):

(a) involve advice and not just information; and

(b) involve advice on the merits of entering into a particular *regulated mortgage contract* (see *PERG* 4.6.17G to 4.6.20G (Advice must relate to the merits (of entering into as borrower or varying))).

4.6.16D G One factor in deciding whether what was said by an adviser in a particular situation did or did not amount to advice is to look at the inquiry to which the adviser was responding. If a *customer* asks for a recommendation, any response is likely to be regarded as advice.

4.6.16E G On the other hand, if a *customer* makes a purely factual inquiry it may be the case that a reply which simply provides the relevant factual information is no more than that. In this case it is relevant whether the adviser makes it clear that they do not give advice, or whether the adviser runs an advisory business.

Advice must relate to the merits (of entering into as borrower or varying)

…

4.6.18 G ~~A neutral and balanced~~ An explanation of the implications under a *regulated mortgage contract* of, for example, exercising certain rights or failing to make interest payments on time, need not, itself, involve advice on the merits of entering into that contract or varying its terms.

…

4.6.20 G Without an explicit or implicit ~~advice~~ recommendation on the merits of entering into as borrower or varying the terms of a *regulated mortgage contract*, advice will not fall under article 53A if it is advice on:

(1) the likely meaning of uncertain provisions in a *regulated mortgage contract*; or

(2) ~~on~~ how to complete an application form; or

(3) the effect of contractual terms and their consequences; or

(4) terms which are common in the market.

~~Scripted~~ Pre-sale questioning (including decision trees)

4.6.21 G ~~Scripted~~ Pre-sale questioning involves ~~using any form of sequenced~~ putting a sequence of questions in order to extract information from a *person* ~~with a view to facilitating the selection by that person of~~ to help them best select a mortgage ~~or other product~~ that meets ~~his~~ their needs. A decision tree is an example of ~~scripted~~ pre-sale questioning. The process of going through the questions will usually narrow down the range of options that are available. ~~Scripted questions must be prepared in advance of their actual use.~~

4.6.22 G (1) ~~Undertaking the process of scripted questioning gives rise to particular issues concerning advice. These mainly involve~~ There are two aspects of ~~this *regulated activity*. These are~~ the definition of *advising on regulated mortgage contracts* that are particularly relevant to whether pre-sale questioning involves *advising on regulated mortgage contracts*:

(a) the fact that advice must relate to a particular *regulated mortgage contract* (see *PERG* 4.6.5G); and

(b) the distinction between information and advice (see *PERG* 4.6.13G).

(2) Whether or not ~~scripted~~ pre-sale questioning in any particular case is *advising on regulated mortgage contracts* will depend on all the circumstances.

(3) ~~If the~~ The pre-sale questioning process may ~~involves~~ involve identifying one or more particular *regulated mortgage contracts* ~~then, in the *FCA's* view~~. If so, to avoid *advising on regulated mortgage contracts*, the critical factor is likely to be whether the process is limited to, and likely to be perceived by the borrower as, assisting the borrower to make ~~his~~ their own choice of product which has particular features which the borrower regards as important. The questioner will need to avoid making any judgement on the suitability of one or more products for the borrower. See also *PERG* 4.6.4G for other matters that may be relevant.

4.6.22A G There is considerable potential for variation in the form, content and manner of pre-sale questioning, but there are two broad types, as described in *PERG* 4.6.23G and 4.6.24G.

4.6.23 G ~~The potential for variation in the form, content and manner of scripted questioning is considerable, but there are two broad types.~~ The first type involves ~~providing questions and answers which are confined to~~ identifying *regulated mortgage contracts* based on factual matters. ~~(for~~ For example, the purpose may be to identify whether a borrower wishes to pay a fixed or variable rate of interest or the size of deposit available~~)~~. ~~In the *FCA's* view, this does not of itself amount to *advising on regulated mortgage contracts*, as it involves the provision of information rather than advice.~~ There are various possible scenarios, including the following:

(1) the questioner may go on to identify several particular *regulated mortgage contracts* which match features identified by the ~~scripted~~ pre-sale questioning; provided these are presented in a balanced and neutral way (for example, they identify all the matching *regulated mortgage contracts*, without making a recommendation as to a particular one) this need not of itself involve *advising on regulated mortgage contracts*;

(2) the questioner may go on to advise the borrower on the merits of one particular *regulated mortgage contract* over another; this would be *advising on regulated mortgage contracts*;

(3) the questioner may, before or during the course of the ~~scripted~~ pre-sale questioning, give ~~a recommendation or opinion which influences the choice of mortgage contract and~~ information that considered on its own would not involve *advising on regulated*

mortgage contracts; but may, following the ~~scripted~~ pre-sale questioning, identify one or more particular *regulated mortgage contracts*~~; the key issue then is whether the advice can be said to relate to a particular regulated mortgage contract (see further *PERG* 4.6.22G))~~. The factors described in *PERG* 4.6.25G are relevant to deciding whether or not the questioner is *advising on regulated mortgage contracts*.

4.6.24 G The second type of ~~scripted~~ pre-sale questioning involves providing questions and answers incorporating opinion, judgement or recommendations ~~(for example, whether a repayment mortgage or interest-only mortgage is a better option or whether interest rates are likely to rise)~~. There are various possible scenarios, including the following:

(1) the ~~scripted~~ pre-sale questioning may not lead to the identification of any particular *regulated mortgage contract*; in this case, the questioner has provided advice, but it is generic advice and does not amount to *advising on regulated mortgage contracts*; or

(2) the ~~scripted~~ pre-sale questioning may lead to the identification of one or more particular *regulated mortgage contracts*~~; the key issue then is whether the advice can be said to relate to a particular regulated mortgage contract (see further *PERG* 4.6.22G)~~. In principle, this is likely to involve *advising on regulated mortgage contracts* as regulated advice includes any communication with the *customer* which, in the particular context in which it is given, goes beyond the mere provision of information and is objectively likely to influence the *customer*'s decision whether or not to enter into the *regulated mortgage contract* (see *PERG* 4.6.14G). However, the factors described in *PERG* 4.6.25G are still relevant to deciding whether or not the questioner is *advising on regulated mortgage contracts*.

4.6.25 G ~~In the scenarios identified in~~ When the scripted pre-sale questioning identifies particular *regulated mortgage contracts* (see *PERG* 4.6.23G(3) and *PERG* 4.6.24G(2)), the *FCA* considers that it is necessary to look at the process and outcome of ~~scripted~~ the pre-sale questioning as a whole~~. It may be that the element of advice incorporated in the questioning may properly be viewed as generic advice if it were considered in isolation. But, although the actual advice may be generic, the process has ended in identifying one or more particular *regulated mortgage contracts*. The combination of the generic advice and the identification of a particular or several particular *regulated mortgage contracts* to which it leads may well, in the *FCA*'s view, cause the questioner to be *advising on regulated mortgage contracts*. Factors that may be relevant~~ in deciding whether the process involves *advising on regulated mortgage contracts*. Factors that may be relevant include:

(1) any representations made by the questioner at the start of the questioning relating to the service ~~he is~~ they are to provide;

(2) the context in which the questioning takes place;

(3) the stage in the questioning at which the opinion is offered and its significance;

(4) the role played by any questioner who guides a *person* through the ~~scripted~~ pre-sale questions;

(5) the outcome of the questioning (whether particular *regulated mortgage contracts* are highlighted, how many of them, who provides them, their relationship to the questioner and so on); and

(6) whether the ~~scripted~~ pre-sale questions and answers have been provided by, and are clearly the responsibility of, an unconnected third party ~~(for example, the *FCA*)~~, and all that the questioner has done is help the borrower understand what the questions or options are and how to determine which option applies to ~~his~~ their particular circumstances.

4.6.25A G A *firm* selling *regulated mortgage contracts* through its website might make its list of the *regulated mortgage contracts* it sells easier to search by allowing the *customer* to filter mortgages based on factors presented by the website and selected by the *customer*. Only products that meet the search criteria input by the *customer* are displayed.

4.6.25B G (1) The filtering described in *PERG* 4.6.25AG might be based upon simple objective factors like price. This should not generally involve *advising on regulated mortgage contracts*, as explained in *PERG* 4.6.23G(1).

(2) The filtering described in *PERG* 4.6.25AG might, however, be based upon factors such as balancing *customer* preferences on price, interest rate and term. This is not a simple objective factor like price alone.

(3) Where all a *firm* is doing is listing product features of its own *regulated mortgage contracts*, for example by ranking objectively by the cost of any arrangement fee, that *firm* is unlikely to be *advising on regulated mortgage contracts* as long as it is clear to the *customer* that this objective ranking is all that the *firm* is doing. A description of a product's features is not advice.

(4) Similarly, where a *firm* is describing *regulated mortgage contracts* offered by a third party and the product features are drawn directly from information made available to the *firm* by that third party, the *firm* is unlikely to be advising on *regulated mortgage contracts* as long as it is clear to the *customer* that all the *firm* is doing is describing *regulated mortgage contracts* offered by a third party. A description of the product features is the factual representation of the *regulated mortgage contracts* and therefore likely to be information and not advice.

(5) If the input from the *customer* is much more extensive, and the way that those inputs interact on the website is much more complicated, than the processes described in (3) and (4), the website is not simply displaying factual information about the design of the product. In that case the production of a list of results uses an element of opinion and skill (albeit automated) in translating the *customer*'s input into a display of a particular product or products. Either explicitly or implicitly this is presented as meeting the *customer*'s requirements and wishes as input into the system. The result is that the filtering process is closer to the one in (2) than the one in (3) and so it is more likely that the *firm* is *advising on regulated mortgage contracts*.

Medium used to give advice

…

4.6.28 G Taking electronic commerce as an example, the use of electronic decision trees does not present any novel problems. ~~The same principles apply as with a paper version~~ The *firm* will be giving advice for the purpose of *advising on regulated mortgage contracts* only if the service goes beyond the mere provision of information and is objectively likely to influence the *customer*'s decision whether or not to enter into the *regulated mortgage contract* (see *PERG* 4.6.21G to *PERG* 4.6.25BG (~~Scripted~~ Pre-sale questioning (including decision trees))).

4.6.28A G Some software services involve the generation of specific prompts promoting remortgaging. These prompts are liable, as a general rule, to be advice for the purposes of article 53A (as well as financial promotions) given by the *person* responsible for the provision of the software. The exception to this is where the user of the software is required to use enough control over the setting of parameters and inputting of information for the prompts to be regarded as having been generated by the *customer* rather than by the software itself.

…

Exclusion: periodical publications, broadcasts and websites

4.6.30 G The main exclusion from *advising on regulated mortgage contracts* relates to advice given in periodical publications, regularly updated news and information services and broadcasts (article 54 of the *Regulated Activities Order* (Advice given in newspapers etc)). The exclusion applies to *advising on regulated mortgage contracts* if the principal purpose of any of these publications, news and information services or broadcasts is neither to give advice of the kind to which ~~article 53 (Advising on investments) or~~ article 53A applies nor to lead or enable persons to~~:~~ enter as borrower into *regulated mortgage contracts* or vary the terms of *regulated mortgage contracts* entered into by such *persons* as the borrower.

(1) ~~acquire or dispose of *securities* or *contractually based investments*; or~~ [deleted]

(2) ~~enter as borrower into *regulated mortgage contracts* or vary the terms of *regulated mortgage contracts* entered into by such *persons* as the borrower.~~ [deleted]

This is explained in greater detail, together with the provisions on the granting of certificates, in *PERG* 7 (Periodical publications, news services and broadcasts: applications for certification).

…

4.6.34 G Further examples of what is and is not regulated advice

This table belongs to *PERG* 4.6.33G.

Example of what the firm says and does	Regulated or not?
…	…
(2) The *firm* says "We have a wide range of mortgages, our best rates are two-year fixed rates, you might want to look at those."	Yes. The *firm* has identified specific products that it offers and is ~~steering the customer~~ drawing the *customer*'s attention to those products. Identifying which products have the lowest rates is not advice on its own, only facts. However, "best" involves a value ~~judgment~~ judgement, particularly when a comparison is made with other products that have different periods for which interest is fixed or that have variable interest rates.
…	…
(5) The *firm* says "Our fixed rates start at 4.99% for two years with a £900 fee. Our variable rates start at 4.50% with a £800 fee. Depending on how much you want to borrow and your circumstances, this may affect the rate available to you."	No. The *firm* is comparing two products without recommending either, nor is the *firm* ~~steering the customer to~~ recommending one over the other.

… …

Appendix 2
Consumer research report

www.fca.org.uk/publication/research/buying-a-mortgage-without-advice.pdf

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