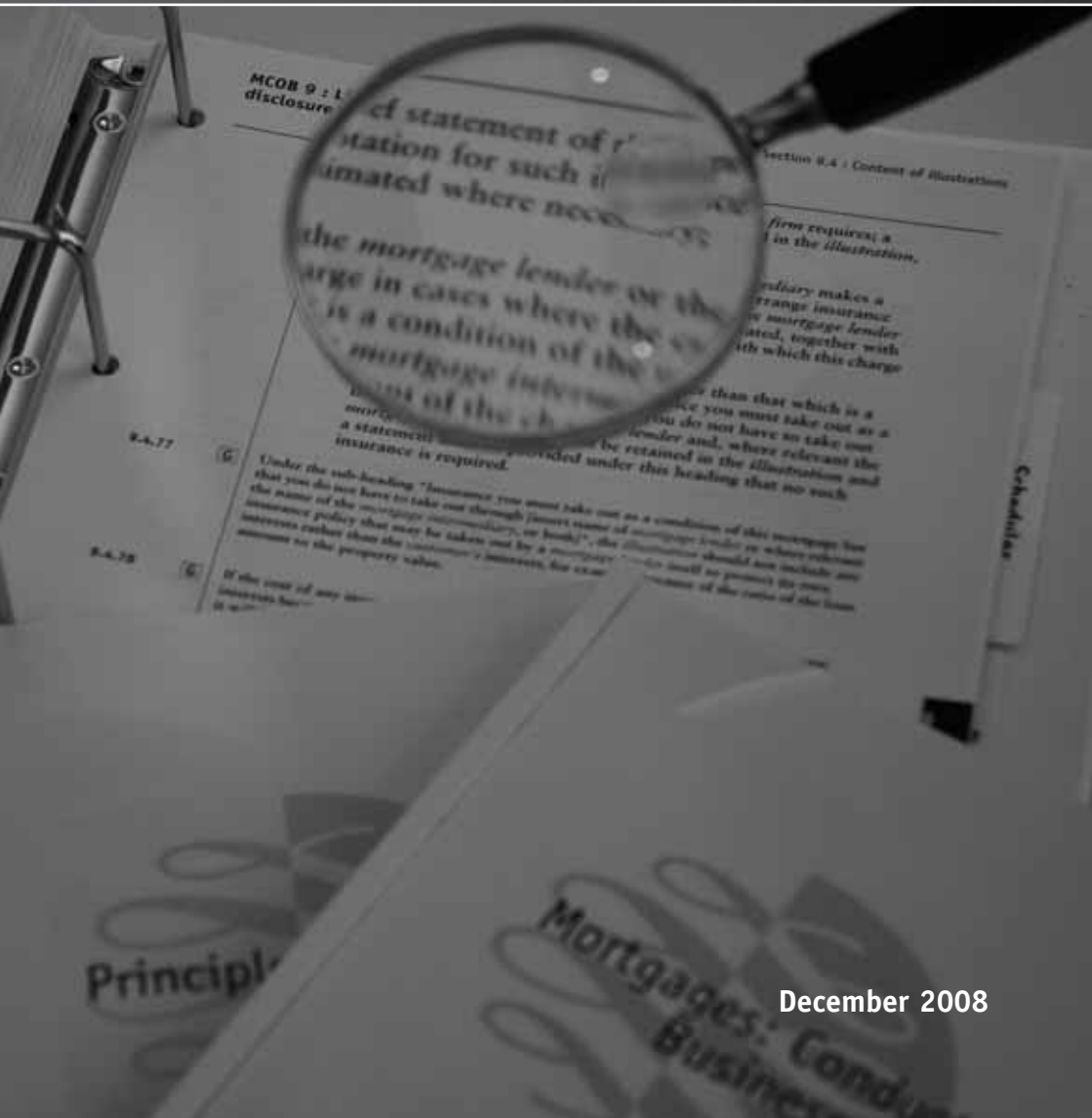


Key Rules for Mortgage and Home Reversion Brokers



December 2008

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Ordering printed publications

Printed hard copies of Key Rules for Mortgage and Home Reversion Brokers can be ordered online:

<http://www.fsa.gov.uk/Pages/Library/Ordering/index.html>

These Key Rules are designed for smaller mortgage and home reversion brokers whose operations and customers are all based in the UK.

What do we mean by mortgage and home reversion brokers?

By 'mortgage broker' and 'home reversion broker' we mean a firm (other than an authorised professional firm) whose only regulated activities involve arranging deals in, or advising on, regulated mortgage contracts or home reversion plans, and agreeing to carry on these activities. You can check this by looking up your firm's entry on the FSA Register (www.fsa.gov.uk/register). Firms that carry on activities other than these may also find Key Rules useful for their mortgage and home reversion broking activities.

The Key Rules are drawn from our Handbook of rules and guidance, but to make them easier to use we have supplemented them with some explanatory material.

Key Rules are one of a number of measures the FSA is pursuing to make the Handbook more accessible. To this end we have identified the rules that are most relevant to mortgage and home reversion brokers in their day-to-day customer-facing work. We have added the main systems and controls rules to give users an overview of the kinds of systems and controls their firm should have in place.

When using Key Rules it is important to be aware that there are other rules and guidance within the Handbook that may be relevant to your situation.

What have we left out of the Key Rules?

The following are the main areas that Key Rules does not cover:

- *Guidance*: Key Rules focuses on rules, although we have included a very limited amount of guidance where we think it is needed to understand a rule's main concepts.

- *Rules that are mainly of interest to mortgage lenders or reversion providers:* for example, details of what needs to be included in a keyfacts illustration (KFI).
- *Rules concerning financial resources and other prudential requirements.*
- *Detailed rules that focus on a firm's systems:* for example, details of what must be included in a firm's complaints procedure, since these are not relevant on a day-to-day basis.
- *FSA's policies and procedures on authorisation, supervision, enforcement, decision making or handling complaints against itself.*
- *Material governing the Financial Ombudsman Service (FOS) and the Financial Services Compensation Scheme (FSCS).*
- *Fee and levy rules:* firms are invoiced for the fees and levies that they must pay.
- *Training and competence rules:* firms must ensure staff attain and maintain the relevant competence requirements.
- *Financial promotions of investment or insurance products and services:* we have only included financial promotion rules on financial promotions of qualifying credit and home reversion plans.
- *Distance mortgage mediation:* Key Rules does not cover these contracts with retail customers because of their rarity.
- *Key Rules does not cover situations where the firm's customer is the reversion provider.*
- *Home purchase plans:* for example, activities relating to plans enabling Muslim customers to buy homes in a way that complies with Islamic law.
- *Technical application provisions:* by limiting the type of activities covered by Key Rules we have been able to remove these.

This does not mean that rules not covered are any less important – we will still expect firms to take reasonable care to have systems in place to comply with all of our rules, including those that are outside the focus of Key Rules. If you want to see the full set of rules, please refer to the tailored handbook for mortgage and home reversion brokers at <http://fsahandbook.info>.

As part of making Key Rules accessible, we have tried to stick with commonly used terminology. So in place of the Handbook defined term ‘mortgage intermediary’ we use ‘firm’. In place of ‘regulated mortgage contract’ we use ‘mortgage’ unless we need to distinguish between regulated mortgages and unregulated mortgages, in which case we use those terms. Where the rules need to refer to mortgages that are not lifetime mortgages, we call these ‘standard’ mortgages.

We have also reworded rules to simplify them and remove references that are not relevant to Key Rules. If you want to see what rule in the full Handbook a Key Rule is based on, just turn to the index on page 45.

These Key Rules are based on the Handbook at 6 April 2007. We propose to publish a new version of these Key Rules annually, to keep them up to date.

Key Rules are not formal guidance and do not have the status of guidance in the Handbook. You cannot use Key Rules to counter a charge of breaking our rules. In the event of any conflict between Key Rules and the Handbook, the Handbook takes precedence.

Principles for businesses

1	Integrity	A firm must conduct its business with integrity.
2	Skill, care and diligence	A firm must conduct its business with due skill, care and diligence.
3	Management and control	A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
4	Financial prudence	A firm must maintain adequate financial resources.
5	Market conduct	A firm must observe proper standards of market conduct.
6	Customers' interests	A firm must pay due regard to the interests of its customers and treat them fairly.
7	Communications with clients	A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.
8	Conflicts of interest	A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.
9	Customers: relationships of trust	A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.
10	Clients' assets	A firm must arrange adequate protection for clients' assets when it is responsible for them.
11	Relations with regulators	A firm must deal with its regulators in an open and cooperative way, and must disclose to the FSA appropriately anything relating to the firm of which the FSA would reasonably expect notice.

Financial promotion

This chapter applies to the communication and approval of financial promotions of ‘qualifying credit’, home reversion plans or firms’ associated services. ‘Qualifying credit’ means, broadly, credit provided by a regulated mortgage lender which is (wholly or partially) secured on land. So qualifying credit includes regulated mortgages but also other types of secured credit (such as buy-to-let mortgages) if the lender also provides regulated mortgages.

Financial promotion exemptions

The financial promotion rules do not apply to the types of financial promotion listed below, but most of them do apply if a firm is approving a financial promotion.

- Mortgage KFIs.
- “Image advertisements” which contain no more than:
 - the name of the firm;
 - a logo;
 - a contact point;
 - a brief, factual statement of the firm’s main occupation.
- A financial promotion which can lawfully be communicated by an unauthorised communicator without approval (such as ‘one-off’ financial promotions).

Communicating non-written financial promotions of qualifying credit

A firm must ensure that an individual who makes a financial promotion of qualifying credit on its behalf in the course of a personal visit, telephone conversation or other interactive dialogue:

- does so in a way which is clear, fair and not misleading;
- does not make any untrue claims;
- makes clear the purpose of the financial promotion at the initial point of communication; and
- identifies himself and the firm which he represents.

If the time and method of communication were not previously agreed by the recipient, the firm must ensure that the individual does the following:

- Checks that the recipient wishes him to proceed.
- Terminates the communication if the recipient does not wish him to proceed (but the individual may ask for another appointment).
- Promptly recognises and respects the right of the recipient to end the communication at any time and refuse any request for another appointment.
- Gives any person with whom he arranges an appointment a contact point.
- Does not communicate with a person at an unsocial hour or call an unlisted telephone number, unless the person has previously agreed.

Ban on cold calling

A firm must not make a cold call unless:

- it has an established existing customer relationship; and
- the customer envisages receiving cold calls.

Communicating or approving written promotions

Before a firm communicates or approves a written financial promotion, it must:

- show it is clear, fair and not misleading;
- show it complies with the financial promotion rules; and
- have this checked by someone with appropriate expertise.

A firm must not approve a financial promotion made, or to be made, in the course of a personal visit, telephone conversation or other interactive dialogue.

Communicating a written financial promotion where another firm has confirmed compliance

A firm can communicate a financial promotion which has been produced by another person without checking its compliance provided that:

- it takes reasonable care to establish that another firm has already confirmed its compliance;
- it takes reasonable care to establish that it communicates the financial promotion only to recipients of the type for whom it was intended at the time the other firm confirmed compliance; and
- so far as it is, or ought reasonably to be, aware:
 - the financial promotion has not ceased to be clear, fair and not misleading since the time confirmation was given; and
 - the other firm has not withdrawn the financial promotion.

Clear, fair and not misleading: supplementary provisions

There are supplementary provisions setting out reasonable steps that a firm should take to show that a written financial promotion is clear, fair and not misleading. Most are not repeated here, but a firm should take reasonable steps to ensure the following:

- When a financial promotion describes a product feature, the same prominence is given to the possible disadvantages of that feature as to the benefits.
- Any statement of fact, promise or prediction is clear, fair and not misleading and any relevant assumptions are clearly and prominently disclosed.
- Facts on which any comparison or contrast is made are verified, relevant assumptions are prominently disclosed and it is presented in a fair and balanced way, including all factors which are relevant to the comparison or contrast.
- Required statements should appear in proximity to each other.

Restriction on using certain expressions

A written financial promotion of qualifying credit must not contain any of the following (or similar) expressions unless the relevant condition is met.

Expression	Condition
Overdraft	The agreement enables the customer to overdraw on a current account.
Interest free 0% finance Interest free option	The total amount payable by the customer does not exceed the cash price. OR In relation to a multi-rate mortgage, for a rate of charge of 0% provided that during the period in which the rate applies there is no interest charged and no increase in the amount of the mortgage loan.
No deposit	No advance payments are required to be made on the loan.
Mortgage guaranteed Pre-cleared	The mortgage availability is not conditional on the customer's credit status.
Gift Present	There are no conditions requiring the relevant money or items to be returned.

Required statements: name and contact point

A written financial promotion of qualifying credit must contain the name of the firm and either an address or a contact point from which an address is available.

Required statements: risks

A written financial promotion must prominently contain each of the following statements in the circumstances stated. However, no risk statement is required if the financial promotion is part of:

- a sound or TV broadcast contained within programming the primary purpose of which is not to promote home finance; or
- an exhibition of pictures, photos or films.

Product promoted	Statement	Note
Lifetime mortgage	"This is a lifetime mortgage. To understand the features and risks, ask for a personalised illustration."	May be adapted if the financial promotion also relates to a home reversion plan.
Home reversion plan	That the financial promotion relates to a home reversion plan and the customer should ask for a personalised illustration to understand its features and risks.	
Paying off unsecured debts by taking out qualifying credit	"Think carefully before securing other debts against your home. Your home may be repossessed if you do not keep up repayments on your mortgage."	
Mortgage	"Your home may be repossessed if you do not keep up repayments on your mortgage."	Required unless one of the above statements is used. May be amended to the extent necessary to reflect credit being secured on property other than the customer's home.
Mortgage in a currency other than sterling	"Changes in the exchange rate may increase the sterling equivalent of your debt."	Must be the last required risk statement.

Conduct of business rules: Financial promotion

References to ‘your mortgage’ may be replaced with ‘a mortgage or any other debt secured on it’ if the financial promotion relates to both qualifying credit and credit regulated under the Consumer Credit Act 1974.

Required statement: compulsory purchases

A written financial promotion of qualifying credit must state prominently that obtaining the qualifying credit requires the customer to obtain further products from the firm, its agents or associates, if it is the case.

Required statements: APR

If a written financial promotion of qualifying credit either:

- contains price information for specific qualifying credit; or
- makes reference to availability of credit for customers who might otherwise consider their access restricted,

it must:

- State: “The overall cost for comparison is [X]% APR” with no less prominence than the price information or reference to restricted access to credit. There are rules on calculating an APR that are not repeated here.
- Position the APR after any other rate of charge, clearly distinguishing it but without putting any other information between the APR and any other rate of charge.
- If the APR varies depending on the circumstances of the customer:
 - state: “The actual rate available will depend upon your circumstances. Ask for a personalised illustration.”; and
 - the APR disclosed (or less) must apply to at least 66% of customers responding to the promotion and who enter into a relevant qualifying credit agreement.

Required statement: multi-rate mortgages

A financial promotion of qualifying credit which describes a potential rate of charge for a product must clearly and prominently describe any other potential rate. The description must:

- Use the current rate for any future variable rate.
- State the rates in sequence.
- State after each rate the period of application and that the rate then changes.

Required statement: fees

A financial promotion that relates to advising on or arranging qualifying credit must state or give an indication of any fee for these activities. The indication must be based on the business expected to arise from the financial promotion.

Contrasts and comparisons of features

A written financial promotion of qualifying credit which includes contrasts or comparisons must:

- Compare credit meeting the same needs or purpose.
- Objectively compare the representative features, which may include price.
- In any comparison referring to a special offer, indicate in a clear and unequivocal way:
 - its start date (if it has not yet begun); and
 - its end date or (if appropriate) that it is subject to the qualifying credit's availability.

There are additional rules regarding use of another firm's trade marks, trade names and distinguishing marks which are not repeated here.

Initial disclosure

These rules seek to ensure that customers are adequately informed about the nature of the service they will receive.

Scope of service provided

A firm must take reasonable steps to ensure that:

- for each product type offered, the scope of service given to a customer, and the products offered, are based on:
 - the whole market;
 - a limited number of providers; or
 - a single provider; and
- the scope of service it holds itself out as offering reflects its practice.

If a firm offers a whole of market service, it must:

- consider a sufficiently large number of the relevant product type which are generally available from the market as a whole; and
- do this based on criteria which reflect adequate knowledge of that market.

The different types of product for the purpose of this and the ‘arranging and suitable advice’ chapter are the following:

- Standard mortgages.
- Lifetime mortgages.
- Home reversion plans.
- Business loans.

Widening the scope of service provided

Before a firm widens the scope of service it gives to a customer, it must take reasonable steps to ensure:

- the customer is made aware of the proposed change in writing or another durable medium; and
- the customer's attention is drawn to any resulting change in fees.

Independence

A firm that holds itself out as acting independently must intend to:

- provide the relevant service mainly based on the whole market in the relevant product; and
- offer a customer a purely fee-based option for paying for its services.

Such a firm must ensure that the service it actually provides is consistent with this rule.

Providing initial disclosure information

As soon as a firm anticipates giving personalised information or advice on a product (or a relevant variation) to a customer, or the services it will provide change, it must:

- establish:
 - whether it will provide advice or information; and
 - how much the customer will pay or the basis on which the firm will be paid for its services; and
- ensure the customer has been provided with an appropriate initial disclosure document (IDD) or, if appropriate, a combined initial disclosure document (CIDD) in writing or another durable medium.

Conduct of business rules: Initial disclosure

However, if the contact is by telephone then, unless the firm has already provided an appropriate IDD or CIDD, the firm must:

- give the information below over the telephone before proceeding further; and
 - unless the call establishes that the customer is ineligible for relevant products offered by the firm, provide an IDD or CIDD in writing or another durable medium within five business days together with the list of product providers referred to below if requested.
- Identity of the firm and the commercial purpose of the call if initiated by the firm, at the beginning of any conversation with the customer.
 - Scope of service provided by the firm.
 - If the scope of service is based on a limited number of product providers for the relevant product type:
 - that the customer can request a copy of the list of those providers; and
 - confirmation of whether the firm provides services in relation to all of the relevant products generally available for each provider.
 - Whether or not the firm will provide the customer with advice on those products within its scope of service.
 - This information will be confirmed in writing.

Relevant variations are:

- addition or removal of a party;
- taking out a further advance or further release; and
- switching all or part of a mortgage between different interest rates.

This rule does not apply if the firm does not anticipate giving the information or advice during that contact with the customer (e.g. the customer is booking an appointment).

A firm always has the option of using the CIDD to promote their mortgage services alongside the other retail financial services that it provides but it should not be combined with equity release. So, for example, if a firm provides services in relation to standard mortgages, equity release, general insurance and retail investments (and chooses to use the CIDD) it needs to keep two versions on the stocks - and give out as appropriate to the individual customer:

- i) a CIDD relating to standard mortgages, general insurance and retail investments; and
- ii) a CIDD relating to equity release, general insurance and retail investments.

There are rules that are not reproduced here on how to produce an IDD or CIDD. Sample documents and a tool for building disclosure documents are also available from the Small Firms section of the FSA website (www.fsa.gov.uk).

Uncertainty whether a mortgage is regulated

If, at the point that initial disclosure must be provided a firm is uncertain whether a mortgage will be regulated, it can either provide initial disclosure or seek further customer information. If it does not have reasonable evidence that the mortgage is not regulated, it must provide initial disclosure.

Information to be provided to customers on request

If a firm's scope of service for a product type is based on a limited number of product providers, it must keep an up to date list of:

- the providers whose products it offers; and
- whether it offers all of the products available from each.

The list must be in writing or another durable medium and provided to a customer on request.

Arranging and suitable advice

Suitability

A firm must take reasonable steps to ensure that any personal recommendation to a customer to enter into (or vary) a mortgage or equity release transaction is suitable for that customer.

A firm should recommend, out of all the appropriate mortgages or equity release transactions, the transaction that is the least expensive for the customer, taking into account those pricing elements identified by that customer as most important. Firms may, however, make recommendations that take account of other grounds such as speed or quality of service of the product provider.

A firm must not make a recommendation if there is no appropriate product within the scope of service provided.

A product (or variation of it) will be suitable if the firm has reasonable grounds to conclude that:

- Where relevant, the customer can afford to enter into (or vary) it.
- It is appropriate to the customer's needs and circumstances.
- It is the most suitable of those the firm has available to it within the scope of service provided to the customer.
- For an equity release transaction:
 - the customer benefits outweigh any adverse effect on any customer entitlement to means-tested benefits and the customer's tax position (e.g. loss of an age allowance); and
 - alternative fundraising methods are less suitable, such as, in particular, a home reversion plan (where a lifetime mortgage is recommended), a lifetime mortgage (where a home reversion plan is recommended) and, where relevant, a local authority or other grant.

This conclusion must be reached having regard to the facts disclosed by the customer and other relevant facts about the customer of which the firm is or should reasonably be aware.

Affordability

In assessing whether a customer can afford to enter into a particular transaction, a firm:

- must explain to the customer that the assessment is based on:
 - current interest rates, which might rise in future; and
 - the customer's current circumstances, which might change in future; and
- should give due regard to:
 - information that the customer provides about his income and expenditure, and any other resources that he has available;
 - any likely change to these; and
 - the costs that the customer must meet after any discount period ends (assuming unchanged interest rates).

Debt consolidation

If the customer's main purpose in entering into or varying a transaction is debt consolidation, a firm must take account of the following, where relevant, in assessing suitability:

- Costs associated with increasing the repayment period.
- Appropriateness of the customer securing an unsecured loan.
- If the firm knows the customer has payment difficulties, whether it would be more appropriate for an arrangement to be negotiated with the customer's creditor than to take out a mortgage.

Appropriateness: standard mortgages

In assessing whether a mortgage is appropriate to the customer's needs and circumstances, a firm should give due regard to the following:

- Whether the lender's eligibility criteria are met.
- Whether an interest-only or repayment mortgage (or a combination) is appropriate.
- Any customer preference for a particular term.
- Any customer need or preference for stability in payment amounts, especially having regard to the impact of future significant interest rate changes.
- Any customer preference or need for reduced initial payments.
- Any customer intention to make early repayments.
- Any customer preference or need for other features (e.g. payment holidays).

Means-tested benefits and customer's tax position: equity release transactions

If a firm has insufficient knowledge of means-tested benefits and tax allowances to reach a conclusion on whether customer benefits of the transaction would outweigh adverse effects, it must refer the customer to appropriate sources to establish the information (e.g. the Pension Service, HM Revenue and Customs, or Citizens Advice Bureau).

If a customer declines to seek the further information, a firm can still make a personal recommendation where there is an equity release transaction appropriate to the customer's needs and circumstances. The firm must confirm to the customer in writing or another durable medium the basis for making the personal recommendation.

Alternative methods of finance: equity release transaction

In determining whether an equity release transaction from the other market sector is less suitable, and the appropriateness of the product recommended, a firm must consider the following:

- Whether the product provider's eligibility criteria are met.
- Customer's preferences for his estate.
- Customer's health and life expectancy.
- Customer's future plans and needs (e.g. likely need for further funds, or to move house).
- Where relevant, any customer preference or need for stable payment amounts, especially having regard to the impact of future significant interest rate changes.
- Any customer preference or need for other features.

If a customer rejects a firm's conclusion that an alternative method of raising funds is more suitable, it can still make a personal recommendation where there is an equity release transaction appropriate to the customer's needs and circumstances. The firm must confirm to the customer in writing or another durable medium the basis for making the personal recommendation.

Rejected recommendations

If a customer has rejected all of the firm's personal recommendations, and requested information instead on an unsuitable product, a firm can provide that information if:

- it issues a new IDD or CIDD to show that the sale is non-advised; and
- complies with the rules below on non-advised sales.

Record keeping to demonstrate suitability

A firm must record:

- the customer information obtained for the purposes of an advised sale; and
- why it concluded any personal recommendation given satisfies the suitability requirements (including, where relevant, the reasons for not recommending the least expensive of the products appropriate for the customer).

This record must be kept for a minimum of three years. See the Systems and Controls chapter for the general record-keeping requirements.

Non-advised sales: general

If a firm arranges a new mortgage or equity release transaction (or a variation to an existing one) without giving a personal recommendation, all the questions it asks about the customer's needs and circumstances must be scripted in advance.

Staff using the scripted questions must be:

- trained in using the script;
- trained in what constitutes a personal recommendation and what does not; and
- instructed not to give a personal recommendation, unless they have been assessed as competent to do so.

A firm must take reasonable steps to supervise staff who have not been assessed as competent to advise on the relevant product so that they do not give personal recommendations and adhere to the scripted questions in all material respects.

Non-advised sales: additional requirements for equity release transactions

The questions used to help a customer select an equity release transaction must cover the following:

- Whether the product provider's eligibility criteria are met.
- Customer's preferences for his estate.
- Customer's health and life expectancy.
- Customer's future plans and needs (e.g. likely need for further funds, or to move house).
- Where relevant, any customer preference or need for stable payment amounts, especially having regard to the impact of future significant interest rate changes.
- Any customer preference or need for other features.
- Whether the customer has considered alternative methods of fundraising, in particular:
 - a home reversion plan or lifetime mortgage (depending on the product type the customer has sought information on); and
 - where relevant, local authority or other grant assistance.
- Whether the customer has established whether his entitlement to means-tested benefits or his tax position will be adversely affected.

Selling standards: home reversion plans involving unauthorised reversion providers

The rules in this section apply only when a firm arranges for someone to enter into a home reversion plan with an unauthorised reversion provider, or when administering such a plan. The rules apply even if the person taking out the plan (the reversion occupier) is not the firm's customer.

Protecting the reversion occupier's interests

A firm must ensure that the interests of the reversion occupier are protected to a reasonable standard.

Unless it is satisfied on reasonable grounds based on the reversion occupier's knowledge, expertise and experience that it is unnecessary, a firm must obtain from the reversion occupier's legal adviser, before the reversion occupier enters into a home reversion plan, confirmation that:

- he has been instructed to ensure that the reversion occupier's legal rights under the plan are protected to a reasonable standard; and
- he has explained to the customer those aspects of the reversion occupier's legal rights and obligations under the home reversion plan that he needs to understand.

Treating customers fairly

A firm must pay due regard to the interests of the reversion occupier and treat him fairly when drafting, amending the terms of, or imposing obligations or exercising rights or discretions under, a home reversion plan.

Independent valuation

A firm must ensure that any valuation is carried out by a competent valuer who is independent of the reversion provider.

Obtaining best price: partial home reversion plans

A firm must take reasonable steps to ensure that, when a home reversion plan ends and the reversion occupier retains a beneficial interest in the property:

- the property is sold within a reasonable period of time; and
- the best price that might reasonably be obtained is paid.

Product information

These rules seek to ensure that, before submitting an application for a mortgage or home reversion plan, a customer receives information on the product's features and price, and on any linked or tied products. They also seek to ensure that this information is provided when a customer applies to a broker for a further advance, to switch interest rates, or to add or remove a party to a standard mortgage, or for a further release on a home reversion plan.

This information is contained in a keyfacts illustration, or KFI. A provider cannot enter into a mortgage or home reversion plan unless the customer has submitted an application for that product. This gives the customer the opportunity to check that the product is affordable and appropriate.

These rules also apply to post-sale changes to payments due.

Restriction on provision of information other than in a KFI

A firm must not provide a customer with information that is specific to the amount that the customer wants to borrow or release except in the following circumstances:

- It is in the form of a KFI.
- It is provided on screen, for example a computer screen.
- Supplementary information which is not contained within a KFI is provided after or at the same time as a KFI.
- It is provided orally, for example by telephone.

When such information is provided on-screen or orally, a firm must provide the means for the customer to obtain a KFI as soon as practicable, through a delivery channel acceptable to the customer. But a firm does not need to provide a KFI if the customer refuses to disclose key information (for example, his contact details) or where the provision of a KFI is not appropriate (for example, because the customer is not interested in pursuing the enquiry).

Supplementary information must not be provided if it significantly duplicates information provided in the KFI.

Providing a KFI

This rule applies in relation to applications for and personal recommendations on:

- a particular mortgage or home reversion plan;
- a further advance or switch in interest rates on, or the addition or removal of a party to, a standard mortgage; and
- a further release on a home reversion plan.

The firm dealing directly with a customer must ensure the customer is, or has been, provided with an appropriate KFI in writing or another durable medium:

- before the customer submits an application to the product provider; and
- when any of the following occurs:
 - the firm makes a personal recommendation to the customer (unless it is made by telephone, in which case the firm must ensure it is or has been provided within 5 business days);
 - the firm provides written information that is specific to the amount that the customer wants to borrow or release through a particular product; or
 - the customer requests written information from the firm that is specific to the amount that the customer wants to borrow or release on a particular product, unless the firm does not wish to do business with the customer.

A firm may comply with this rule by providing an offer document containing a KFI, if this can be done as quickly as providing a KFI.

KFIs where customer ineligible

A firm must not issue a KFI to a customer for a product for which the customer is clearly ineligible on the basis of the information that the firm has obtained from the customer or the product provider's criteria.

Uncertainty whether a mortgage is regulated

If, at the point a KFI must be provided, a firm is uncertain whether the contract will be a regulated mortgage, it can either provide a KFI, or seek further customer information. If it does not have reasonable evidence that the contract is not a regulated mortgage, it must provide a KFI.

Providing further information on tied products

This rule applies if the customer applies for a product which requires payments to be made relating to a tied product.

If the KFI does not contain an accurate quotation or a reasonable estimate of those payments, the firm must provide the customer with:

- An accurate quotation as soon as possible, and in good time before the offer document is provided.
- A right to withdraw his application for seven days from receipt of that quotation (or acceptance of the mortgage lender or reversion provider's offer if sooner) and receive a refund of any fees paid (excluding arrangement or advice fees).
- A notice with the quotation explaining these rights.

Explaining the importance of a KFI

A firm must explain to the customer the importance of reading and understanding the KFI.

Customer must have time to consider a KFI

A firm must not accept fees, commission a valuation, or undertake any other action that commits the customer to an application until the customer has had the opportunity to consider a KFI.

Information that can be requested when a customer asks for written information

This rule applies where the customer requests written information from the firm that is specific to the customer's requirements on a particular product.

To ensure that the customer receives a KFI without unnecessary delay, a firm must only request the following information:

- Information necessary to ascertain whether or not the product will be a regulated product.
- Information necessary to personalise the KFI.
- Information necessary to produce the KFI (for example, details of the customer's credit record if the terms of the mortgage depend on this, or information regarding relevant tied products).
- Where it affects the availability of the mortgage or affects the information to be included in the KFI, information on:
 - whether the customer is a first-time buyer, a subsequent buyer moving home or is remortgaging without moving home;
 - whether the mortgage is for a right-to-buy or shared ownership purchase;
 - whether the customer needs to self-certify his income;
 - the location of the property to be purchased; and
 - whether the terms are dependent on a third party guarantee.

Where details of the customer's credit record are needed a firm must ask the customer relevant questions about his credit history or, if quicker or the customer cannot provide sufficient information, obtain the information from a credit reference agency.

Producing a KFI

In producing a KFI, a firm must personalise it to reflect the following:

- Customer's name.
- Date of the KFI.
- How long the KFI is valid for.
- Any date by which the product needs to commence.
- Specific product in which the customer is interested.
- Amount required, or the amount the customer wishes to draw down or receive on a regular basis.
- Price or value of the property on which the mortgage would be secured, or the equity release amount is based (estimated where necessary).
- Term of a mortgage (if the customer is unable to suggest a date at which he expects to repay the loan, for example in the case of an open-ended secured bridging loan, secured overdraft or mortgage credit card, a term of 12 months must be assumed and this assumption stated).
- Term of an instalment reversion plan.
- Estimated term of a lifetime mortgage or open-ended instalment reversion plan.
- Whether a mortgage is to be interest-only, repayment, or a combination.

A KFI must be in a document separate from any other material provided to the customer.

There are other detailed rules on the content of a KFI that are not set out here. A KFI must not contain content other than that required in those rules.

Mortgages: no preference between repayment and interest-only

If the customer expresses no preference between a repayment mortgage and an interest-only mortgage, the firm must:

- provide a KFI for a repayment mortgage (or an interest-only mortgage if it only provides these); and
- make the customer aware that it has provided the KFI on this basis.

Amount required, or the amount the customer wishes to draw down or receive

In personalising the KFI, the amount required, or the amount to be drawn down or received is one of the following:

- The amount that the customer has asked to borrow, release or draw down.
- If a mortgage is a revolving credit agreement such as a secured overdraft or mortgage credit card:
 - (if it provides for an initial drawdown and linked borrowing facilities that would allow the customer to increase the amount of the loan without any further approval from the mortgage lender) the amount of the initial drawdown; or
 - (in all other cases) the total borrowing that the firm is willing to provide.
- For a standard mortgage, if the loan is to be released in instalments, the total amount of the loan required.
- If, on the basis of the information obtained from the customer, it is clear that the customer would not be eligible to borrow, release or draw down the amount requested, an estimate of the amount that the customer could borrow, release or draw down, based on that information.

- For a lifetime mortgage, or instalment reversion plan, if the amount that can be drawn down is variable, the firm must agree with the customer an expected amount to be drawn down per year.
- If the KFI relates to a further advance, the amount must be based on the amount to be advanced.

Equity release: estimated term

In estimating the term of a lifetime mortgage or an open-ended instalment reversion plan, a firm must, subject to using a term of at least fifteen years:

- use the following mortality table: PMA92(C=2010) and PFA92(C=2010) for males and females respectively, derivable from the Continuous Mortality Investigation Report 17, published by the Institute of Actuaries and the Faculty of Actuaries in 1999; and
- for the purposes of the KFI, the term should be rounded up to a whole year.

If the KFI is issued to two or more customers who intend to borrow jointly, or who own the property jointly, the term estimated should be based on the longest life expectancy.

If the customer requests a KFI showing a term of the customer's choice, that KFI must be issued in addition to the KFI showing the term calculated in accordance with these rules. The term chosen should be stated in the KFI.

Accuracy

A firm must take reasonable steps to ensure that a KFI which is issued on its behalf is accurate. This rule does not apply to a KFI provided to the firm by a mortgage lender or reversion provider.

The rule is subject to the following tolerances:

For mortgages:

- The following amounts must be accurate to within one percent or £1, whichever is the greater, below the actual figures charged by the mortgage lender:
 - total amount payable;
 - amount payable for every £1 borrowed;
 - amounts that the customer must pay by regular instalment, or the amounts of interest charged; and
 - amount by which the regular instalment, the total amount payable for loans without a term or a regular repayment plan, or the estimated amount owed, would increase following a one percentage point increase in interest rates.
- The APR in Section 5 of the KFI cannot be understated by more than 0.1%.

For mortgages and home reversion plans:

- Estimates may be used for conveyancing fees and insurance premiums.

Changes to the amount of payments due

A firm must give a mortgage customer the following information before any change to the amount of a payment due requested or agreed by a customer post-sale. The information must be provided in a durable medium and a single communication, and may be in the form of a KFI.

- Amount outstanding at the date the change is requested.
- Payment due and frequency of payments.
- Applicable rate of interest.
- Type of interest rate.

- Details of any known changes to the payment due, rate of interest or type of interest rate will change (for example, at the end of a fixed rate period).
- If a mortgage will become interest-only, the prominent text: “You will still owe [X] at the end of the mortgage term. You will need to make separate arrangements to repay this. When comparing the new payments on this mortgage with your previous payments, remember to add any money you may need to pay into a separate savings plan to build up a lump sum to repay the amount you have borrowed.”
- Details of any charges that apply for making the changes.

Business loans and further advances

If a mortgage is for a business purpose, a firm may choose to provide a business illustration instead of a KFI.

Any business illustration provided by a firm must be limited to facilities provided under a mortgage. There are detailed rules on the content of a business illustration that are not set out here.

If, in relation to a business loan, a customer seeks an immediate increase in borrowing or overdraws, a firm must provide within five business days either a business illustration for the new total borrowing, or the following information in a durable medium and a single communication.

- New amount outstanding on the business loan.
- Details of any resulting changes in repayment arrangements or interest rate charged.
- Maximum amount payable for any new or amended early repayment charge.
- Details of any charges that apply for making the changes.

Distance selling

Unsolicited distance services

If a firm runs an organised distance sales scheme or service provision scheme, it must not, under that scheme:

- supply a service to a retail customer without a prior request on his part, when this supply includes a request for immediate or deferred payment; or
- enforce any obligation against a retail customer in the event of unsolicited supplies, the absence of a reply not constituting consent.

This rule only applies in relation to a scheme which makes exclusive use of one or more means of distance communication (e.g. post, telephone or internet) up to and including the time at which the contract is concluded.

General

Required expressions in communications

Any communication to a customer must describe the following charges and products using the following expressions only:

- Early repayment charge.
- Higher lending charge.
- Lifetime mortgage.
- Home reversion plan.

Inducements and referral of business

A firm must take reasonable steps to ensure that neither it nor anyone acting on its behalf:

- offers, gives, solicits or accepts an inducement; or
- refers any mortgage business to another person on its own initiative or on the instructions of an associate;

if it is likely materially to conflict with the firm's or the recipient firm's duties to its customers in connection with a mortgage.

A firm must not solicit or accept an inducement the value of which increases if it exceeds a target for business referred (e.g. a volume override).

Restriction of liability to a customer

A firm must not exclude or restrict the duties it owes or the liabilities it has to a customer under the regulatory system. It must not exclude or restrict other duties and liabilities unless it is reasonable for it to do so.

Excessive charges

A firm must ensure that its charges to a customer are not excessive. In determining this a firm should consider charges for competing products, the nature and extent of disclosure of charges to the customer and the degree to which they are an abuse of customer trust.

Referring to approval by FSA

Unless required to do so under the regulatory system, a firm must ensure that neither it nor anyone acting on its behalf claims, in a public statement or to a client that any aspect of its affairs has FSA approval.

This does not prevent a firm explaining, in a way that is fair clear and not misleading, that a particular status has been given to a firm, product or individual, or that express written approval has been given to a specific aspect of the firm's affairs.

Regulated status disclosure

A firm must take reasonable care to ensure that every letter (or electronic equivalent) which it or its employees send to a private customer with a view to or in connection with the firm carrying on a regulated activity includes a regulated status disclosure.

For a UK domestic firm this will be: 'authorised and regulated by the Financial Services Authority'. For an appointed representative, it will be a statement that '[name of appointed representative] is an appointed representative of [name of firm] which is authorised and regulated by the Financial Services Authority.'

Insurance against financial penalties

No firm may enter into, arrange, claim on or make a payment under a contract of insurance that is intended to have, or has or would have, the effect of indemnifying any person against all or part of a financial penalty which has been or may be imposed by the FSA under the Financial Services and Markets Act 2000.

Emergencies

If any emergency arises, a firm will not breach a rule to the extent that compliance with that rule is impracticable due to the emergency. The emergency must be outside the firm's control and be one that could not have been avoided by the firm taking all reasonable steps.

The rule on emergencies applies for as long as:

- (1) the consequences of the emergency exist; and
- (2) the firm can demonstrate that it is taking all practicable steps to deal with those consequences, to comply with the rule, and to mitigate any losses and potential losses to its clients.

The firm must notify the FSA as soon as practicable of the emergency and of the steps it is taking and proposes to take to deal with its consequences.

Requirement to have complaint handling procedures

A firm must have in place and operate appropriate, effective and written internal complaint handling procedures for:

- handling any expression of dissatisfaction (from an eligible complainant or otherwise) about the firm's provision of, or failure to provide, mortgage mediation services; and
- if the firm markets (or has marketed) another firm's mortgage mediation services or if the firm's mortgage mediation services are marketed by another firm, referring to that firm expressions of dissatisfaction about its services.

There are additional rules regarding the content of a firm's complaint handling procedures that are not repeated here.

Using the complaint handling procedures

A firm must take reasonable steps to ensure that all relevant employees and appointed representatives are aware of the firm's internal complaint handling procedures and must endeavour to ensure that they act in accordance with them.

A firm must take reasonable steps to ensure that it handles complaints fairly, consistently and promptly and that it identifies and remedies any recurring or systemic problems, as well as any specific problem identified by a complaint.

Eligible complainants

Eligible complainants will usually include individuals, businesses with group annual turnover of under £1 million, charities with annual income of under £1 million and trustees of a trust with a net asset value of under £1 million. Complaints may be brought on behalf of an eligible complainant.

Complaints handling

A firm that carries on the mortgage mediation activity to which its complaint relates is not an eligible complainant.

There are additional rules on who is an eligible complainant which are not repeated here.

Publicising the complaint handling procedures

A firm must refer eligible complainants in writing to the availability of its internal complaint handling procedures at, or immediately after, the point of sale.

A firm must publish details of its internal complaint handling procedures, supply a copy on request to an eligible complainant, and supply a copy automatically to an eligible complainant from whom it receives a complaint (unless it is resolved by close of business on the next business day).

A firm must display in each of its branches or sales offices to which eligible complainants have access a notice indicating that it is covered by the Financial Ombudsman Service.

Providing compensation

Where a firm decides that redress is appropriate, it must provide fair compensation for any acts or omissions for which it was responsible and comply with any offer of redress which the complainant accepts.

These rules implement the information requirements of the E-Commerce Directive on firms when they carry on an electronic commerce activity with a customer. These requirements are in addition to the usual conduct of business requirements. Electronic commerce activity could include, for example, arranging mortgages with customers via email.

General e-commerce information to be provided

A firm must render easily, directly and permanently accessible to a customer the following information, in relation to any electronic commerce activity which it provides.

- Name of the firm.
- Geographic address at which the firm is established.
- Details of the firm, including its electronic mail address, which allow it to be contacted rapidly and communicated with in a direct and effective manner.
- Statement that the firm is entered in the FSA Register and its FSA Register number.
- Statutory status of the firm. For most firms this is 'Authorised and regulated by the FSA' and for most appointed representatives it is "[Name of appointed representative] is an appointed representative of [name of principal] which is authorised and regulated by the FSA' accompanied by a link to the FSA Register in the form www.fsa.gov.uk/register.
- If the service is subject to value added tax, the relevant identification number.

If a firm refers to the price (including any charges) of its services or products, it must do so clearly and unambiguously and, where relevant, indicate whether the price is inclusive of tax and delivery costs.

Commercial e-commerce communications

A firm must ensure that commercial communications which are part of or constitute an electronic commerce activity comply with the conditions listed below.

- The commercial communication must be clearly identifiable as such.
- The person on whose behalf the commercial communication is made must be clearly identifiable.
- Promotional offers, competitions or games must be clearly identifiable as such and any qualifying conditions must be easily accessible and be presented clearly and unambiguously.

A firm must ensure that any unsolicited commercial communication sent by it by electronic mail is identifiable clearly and unambiguously as such as soon as it is received.

E-commerce information to be provided regarding conclusion of the contract

Except when otherwise agreed by a commercial customer, a firm must give the following information to the customer clearly, comprehensibly and unambiguously and prior to the order being placed by him.

- The different technical steps to follow in order to conclude the contract.
- Whether or not the concluded contract will be filed by the firm and whether it will be accessible.
- The technical means for identifying and correcting input errors prior to the placing of the order.
- The languages offered for the conclusion of the contract.

A firm must indicate any relevant codes of conduct to which it subscribes and provide information on how those codes can be consulted electronically.

The preceding requirements of this rule do not apply to contracts concluded exclusively by exchange of electronic mail or by equivalent individual communications.

A firm must ensure that contract terms and general conditions provided to the customer are made available in a way that allows him to store and reproduce them.

E-commerce requirements relating to the receipt of orders

Except when otherwise agreed by a commercial customer:

- when a customer places an order by electronic means, a firm must ensure that receipt of the order is acknowledged without delay;
- the order and the acknowledgment of receipt are deemed to be received when the parties to whom they are addressed are able to access them; and
- a firm must ensure that it makes available to a customer, appropriate, effective and accessible technical means allowing him to identify and correct technical errors before placing an order.

The first and third bullets do not apply to contracts concluded exclusively by exchange of electronic mail or by equivalent individual communications.

Systems and controls

Systems and controls

A firm must take reasonable care to establish and maintain such systems and controls as are appropriate to its business.

Compliance and financial crime

A firm must take reasonable care to establish and maintain effective systems and controls for compliance with the regulatory system and for countering the risk that the firm might be used to further financial crime.

Apportionment of responsibilities

A firm must take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among its directors and senior managers. It must do so in such a way that it is clear who has which of those responsibilities, and the firm's business and affairs can be adequately monitored and controlled by its directors, relevant senior managers and governing body.

A firm must appropriately allocate to one or more individuals the functions of apportioning the responsibilities required by this rule, and of overseeing the establishment and maintenance of the firm's systems and controls.

Records

A firm must take reasonable care to make and retain adequate records of matters and dealings which are the subject of requirements and standards under the regulatory system. The records must be capable of being reproduced in English on paper.

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