Association of
AMI
Mortgage Intermediaries

<u>Mortgage Market Review summary - Advice</u>

This factsheet sets out a summary of the key changes to the MCOB rulebook relating to advice for mortgage intermediaries.

<u>The customer's best interests</u>

- When undertaking its activities a firm must act honestly, fairly and professionally in accordance with the best interests of its customers
- This applies to both advised and execution-only sales.

<u>Advising and selling</u>

Advised sales - Suitability

- If a firm gives advice to enter into a mortgage (or vary an existing mortgage) it must ensure that the mortgage (or variation) is suitable for that customer
- A firm should take reasonable steps to obtain from a customer all information likely to be relevant for the purposes assessing suitability
- If a customer rejects the advice given, the firm may advise them to enter into a different mortgage, provided this alternative mortgage is suitable for the customer
- A mortgage will not be suitable for a customer unless it is appropriate to their needs and circumstances:
    - A firm may generally rely on any information provided by the customer unless, taking a common sense view of this information, it has reason to doubt it
- A firm must base its determination of whether a mortgage is appropriate to a customer's needs and circumstances on the facts disclosed by the customer and other facts about the customer of which it is, or should be, reasonably be aware.
- No advice must be given to a customer to enter into a mortgage if there is no mortgage product that is suitable from the product range offered by the firm.
    - This means that where the advice is not provided on an unlimited range of products from across the relevant market, the assessment of suitability should not be limited to the types of mortgages which the firm offers. A firm <u>cannot recommend the 'least worst' mortgage</u> where the firm does not have access to products appropriate to the customer's needs and circumstances. This means, for example, that a firm dealing solely in the credit-impaired market should not recommend one of these mortgages if approached for advice by a customer who is not credit-impaired.

Suitability assessment

When a firm assesses whether the mortgage is appropriate to the needs and circumstances of the customer, the factors it must consider include the following, insofar as relevant:

- Whether the customer's requirements appear to be within the mortgage lender's known eligibility criteria for the mortgage. For example:
    - The expected affordability criteria of the mortgage lender

    - Whether the mortgage lender will lend in respect of properties of a non-standard construction
- Whether it is appropriate for the customer to have an interest-only mortgage, a repayment mortgage, or a combination of the two
    - Where a firm has identified an interest-only mortgage as appropriate for a customer, it must ensure that the customer is aware that of the need to demonstrate a clearly understood and credible repayment strategy
- Whether it is appropriate for the customer to take out a mortgage for a particular term.
- Whether it is appropriate for the customer to have stability in the amount of required
- Whether tt is appropriate for the customer to have their payments minimised at the outset
- Whether it is appropriate for the customer to make early repayment
- Whether it is appropriate for the customer to have any other features of a mortgage
- Whether the mortgage is appropriate, based on the information provided by the customer as to his credit history
- Whether it is appropriate for the customer to pay any fees or charges in relation to the mortgage up front, rather than adding them to the sum advanced.

(This list is not exhaustive).

Advising - Interest-only repayment strategy

Firms are not required to advise the customer on a credible repayment strategy or assess the adequacy of a customer's existing repayment strategy.

Advising - Bridging loans

When a firm assesses whether a bridging loan is appropriate for the needs and circumstances of the customer, the additional factors it must consider include:

- Whether it is appropriate for the customer to make regular payments
- Whether it is appropriate for the customer to access finance quickly.

Where a firm has identified a bridging loan as appropriate for a customer:

- It must ensure that the customer is aware of the need to demonstrate a clearly understood and credible repayment strategy to the lender
- It must consider why it is not appropriate for the customer to take out a normal residential mortgage
- If a firm advises a customer to enter into a loan with a term of a particular length so that it does not fall within the definition of a bridging loan, that advice may be relied on by FCA as tending to show contravention of the 'customer's best interests' rule.

Debt consolidation

In addition to the standard suitability considerations, where the main purpose of the mortgage is debt consolidation, it must also take account of the following, where relevant:

- The costs associated with increasing the period over which a debt is to be repaid
- Whether it is appropriate for the customer to secure a previously unsecured loan
- Where the customer is known to have payment difficulties, whether it would be appropriate for the customer to negotiate an arrangement with his creditors rather than to take out a mortgage
- An attempt by the firm to mis-describe the customer's purpose or to encourage the customer to tailor the amount he wishes to borrow to avoid these requirements may

be relied on by FCA as tending to show contravention of the ‘customer’s best interests’ rule.

Further advances

- Where the customer wants to increase their mortgage borrowing, unless the firm knows that the existing lender will not make a further advance to the customer, the firm must inform the customer, that it may be possible, and more appropriate, to do so rather than to enter into a mortgage with another lender.
- There is no obligation on the firms to explore if a further advance is more appropriate.

Other considerations when advising

Firms should explain to the customer that the assessment is based only on the customer’s current circumstances and any reasonably foreseeable changes to those.

Customers with payment shortfalls

When giving advice to a customer with a payment shortfall different considerations apply:

- the circumstances of the customer may mean that, viewed as a new transaction, a customer should not be advised to enter into a mortgage contract. In those cases, a firm may still be able to give advice to that customer where the mortgage concerned is, in the circumstances, a more suitable one than the customer’s existing mortgage.

Outside of the scope of consideration

A firm is not required to consider whether it would be preferable for the customer to:

- Purchase a property by using his own resources, rather than by borrowing under a mortgage
- Rent a property, rather than purchase one
- Delay entering into a mortgage until a later date (for example due to expected changes in house prices or interest rates).

Rejected advice

If the customer rejects the advice and wishes to enter in to a different mortgage product on an execution-only basis, the firm may arrange that as an execution-only transaction.

(although in reality most good mortgage brokers would reassess the client’s needs and circumstances to establish why the recommended product does not meet their needs)

Record keeping

A firm must make and retain a record of:

- The customer’s information, including that relating to the customer's needs and circumstances
- Why the firm has concluded that any advice given to a customer meets the suitability requirements
- The customer’s positive choice for the rolling up of fees or charges, where applicable.

The records must be retained for a minimum of three years from the advice been given.

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About AMI and this Factsheet

This factsheet has been designed to provide members with information on the Mortgage Market Review (MMR).

It is provided as a matter of record for reference purposes. It is not intended to be read as a replacement to understanding the MCOB rule book that takes effect from 26th April 2014.

Furthermore, it is important to remember that MMR amends existing MCOB rules. It is not a new set of rules in its own right. As such firms must also consider existing MCOB rules, which in some instances are unchanged.

The Association of Mortgage Intermediaries was created to be the trade association for professional mortgage intermediaries. It is our role to lobby the regulator to ensure light touch and proportionate regulation. As part of our remit we endeavour to bring insightful and plain English information to the market. This factsheet has been produced in this spirit.

Firms are advised to seek professional advice rather than rely on comments on this brief text. For more information on AMI, contact the address below.

Prepared on the basis of our understanding at April 2013.

This fact sheet does not constitute legal or other professional advice and should not be relied on as such. Specific advice should be sought about your individual circumstances.

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