Mortgage Market Review summary – Execution-only

This factsheet sets out a summary of the key changes to the MCOB rulebook relating to Execution-only requirements for mortgage intermediaries.

Execution-only sales

Execution-only sales (including variations to existing contracts) are restricted to cases where:

- There is no spoken or other interactive dialogue between the firm and the customer during the sale
- If there is spoken or other interactive dialogue between the firm and the customer during the sale:
    - The customer is a high-net worth mortgage customer
    - The customer is a professional customer
    - The loan is solely for a business purpose

    (In each case the customer must have positively elected to proceed with an execution-only sale and identified the product they wishes to purchase)
- The customer has rejected advice, identified the product they wish to purchase and positively elected to proceed with an execution-only sale.

SMS, mobile instant messaging, e-mail and communication via social media sites

An execution-only sale can be conducted via the internet providing there is no interactive dialogue. However, if this process steers the customer towards any one or more of the products the advice requirements would apply. Interactive dialogue includes SMS, mobile instant messaging, email and communication via social media sites

The customer's best interests – Execution-only

- The customer's best interests rule applies in all cases, including execution-only sales
- A firm must not encourage a customer to opt out of receiving advice on mortgage or to reject advice
- Firms are not prohibited from arranging execution-only sales for mortgages for customers they have provided product information to. However, the customer best interest rule means that the information they provide should not steer the customer to elect to enter into an execution-only sale.

Cases where execution-only sales are not permitted

A firm must not enter into or arrange an execution-only sale for a mortgage contract if:

- The customer is intending to use it to exercise a statutory "right to buy"
- The main purpose of mortgage is to raise funds for debt consolidation

- There is spoken or other interactive dialogue between the firm and the customer at any point during the sale.

An attempt by the firm to do the following may be relied on as tending to show contravention of the customer's best interests rules:
- Mis-describe the customer's purpose or characteristics
- Encourage the customer to tailor the amount they wish to borrow; so that the debt consolidation rules do not apply

Exceptions: high-net worth mortgage customers, professional customers and loans solely for a business purpose.

- The rules where execution-only sales are not permitted does not apply where the customer is a high-net worth mortgage customer
- The restriction on 'spoken or other interactive dialogue between the firm and the customer at any point during the sale' does not apply where the customer is a professional customer or the loan is solely for a business purpose.

Exception: rate switches and other variations

The rules where execution-only sales are not permitted do not apply in the case of a variation of a mortgage contract, provided that:
- the variation would not involve the customer taking on additional borrowing other than to finance any product fee or arrangement fee.
  - The reference to a variation includes any new mortgage which would replace an existing mortgage between the customer and the firm (either as the original mortgage lender or as the transferee of the existing contract).
- where the variation will (in whole or part) change from one interest rate to another, the firm has presented to the customer, using only a non-interactive channel, all products offered by it for which the customer is eligible, whether or not the customer then selects from those products using an interactive channel. Examples of rate changes:
  - A transfer from a variable rate to a fixed rate
  - A transfer from one fixed rate to another fixed rate.

The possible variations might involve:
- A transfer to a different property ("porting")
- The addition or removal of a borrower for a joint mortgage
- An extension of the term
- A change in payment method
- Consent to let the property.

(This list is not exhaustive).

If a firm's presentation of the options has (either explicitly or implicitly) steered the customer towards any one or more of the products, then the advice requirements will apply.

Exception: rejected advice

The 'Cases where execution-sales are not permitted' rule does not apply where the customer has rejected the advice and instead wishes to enter into a different mortgage as an execution-only sale.

Execution-only sales: guidance

- If a firm wishes to apply the exceptions for a high-net worth mortgage customer, it should first consider the requirement for evidence before treating a loan as being for a high-net worth mortgage customer
- Where a firm's business model is such that it does not offer advice on mortgages to particular customers, it should ensure that it does not arrange mortgages for customers where execution-only sales are not permitted (such as Right-to-buy).
- Firms may wish to use filtering questions to establish whether the case can proceed on an execution-only basis.

Requirements for execution-only sales

A firm must not arrange an execution-only sale for a mortgage unless:

- For a new mortgage (not a variation), the customer has identified the mortgage they wish to purchase, specifying at least the following information:
    - The name of the mortgage lender
    - The rate of interest
    - The interest rate type (that is, whether fixed, variable or some other type)
    - The price or value of the property on which the mortgage would be secured
    - The length of the term required by the customer
    - The sum the customer wishes to borrow
    - Whether the customer wants an interest-only or a repayment mortgage
- For a contract variation not falling within execution-only exemption (but not falling under the 'Cases where execution-only sales are not permitted' rules – such as Right-to-buy), the customer has specified at least the following information, where applicable:
    - The price or value of the property
    - The length of term required (or confirmation that this should remain unchanged)
    - The amount the customer wishes to borrow
- For a contract variation (rate switch other variation), the customer has specified the variation they wish to enter into.
- The customer has been informed, clearly and prominently and in a durable medium:
    - 'Rejected advice' - where the firm has advised the customer that the mortgage contract (or variation) is unsuitable, that that is the case
    - That in the provision of its services for the execution-only sale the firm is not required to assess the suitability of that mortgage contract (or variation)
    - That the customer will not benefit from the protection of the 'advice rules' on assessing suitability.
- Once the customer has been provided with this information, they have confirmed, in writing, to the firm that he is aware of the consequences of losing the protections of the rules on assessing suitability and are making a positive election to proceed with an execution-only sale.

Managing execution-only sales

A firm which intends to transact execution-only sales must have a clearly defined policy which:

- Sets out the amount of execution-only the business expects to transact
- Sets out its procedures for complying with the execution-only rules, in particular:
    - How it will ensure that, before proceeding with an execution-only sale it has obtained a voluntary and informed positive election from the customer

    - How it will ensure in every case that it acts in compliance with the ‘customer’s best interests’ rule, including not encouraging a customer to enter into a mortgage contract (or variation) as an execution- only sale
- 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.

Record keeping – Execution-only

- Whenever a firm enters into or arranges an execution-only sale for a mortgage, it must make and maintain a record of:
    - The information provided by the customer which satisfies the ‘requirements for execution-only sales rules
    - The information in a durable medium
    - The confirmation by the customer that they have positively opt for an execution-only sale.
    - Any advice from the firm which the customer rejected, including the reasons why it was rejected, before deciding to enter into an execution-only sale
- The record must be retained for a minimum of three years
- A firm must keep an adequate and up-to-date record of its execution-only policy.

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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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