MMR lender roadshow Q&As

Responsible lending including affordability

Questions	Answers
Can a firm use their knowledge of a profession when assessing income and future changes?	Income must be verified in all circumstances. Therefore, if a lender wants to take expected future higher income into account in the affordability assessment they will need some evidence of this. For example, if you are dealing with a trainee solicitor/accountant, a copy of a contract containing their qualification salary may be acceptable evidence.
Can I build the interest rate stress test into my affordability model?	Yes. You must be able to identify this element of the affordability model, and justify the rate used by reference to market expectations.
A firm's responsible lending policy has to be signed-off by a Governing Body. What is the definition of a governing body?	'Governing body' is a defined term in our Handbook Glossary, and is defined as 'the board of directors, committee of management or other governing body of a firm or recognised body, including, in relation to a sole trader, the sole trader'.
Are guarantors allowed under the MMR reforms?	Yes. Where there is a guarantor we expect you to assess affordability for the guarantor(s).
If different branches of a lender operate different lending policies, will each branch need to have its own responsible lending policy?	The firm's responsible lending policy will need to reflect its lending policies. This could be achieved through separate responsible lending policies for each brand, or an over-arching one that reflects the nuances of each brand's approach.
Could income multiples be used to meet the new responsible lending rules?	It is difficult to see how income multiples could work as the sole method of meeting the new affordability requirements. This does not necessarily rule out the use of income multiples completely, if a firm can demonstrate that their approach explicitly considers factors such as expenditure and future interest rate increases (see MCOB 11.6.7G). Nor does it prevent income multiples being used as a cap on lending or to provide an indication of loan size, before a full affordability assessment.

With regard to reasonably foreseeable changes to income, where it can be foreseen that the individual will be going on maternity and their income will substantially reduce as a result. How do you ask questions around this without contravening equality rules?	In PS 12/16 we suggested one way would be to ask a more general question, along the lines of 'are you aware of any changes to your income and expenditure that are likely to affect your ability to meet your mortgage payments?' It is the responsibility of the firm to ensure it is meeting its own equalities obligations.
A customer has been given a concessionary rate because they are paying by direct debit, if they then miss that direct debit can you remove that concessionary rate from them?	If the direct debit discount just reflects the cost saving made by the lender through that method of payment (i.e. direct debit), then it would seem reasonable for the lender to be able to remove the discount if the customer no longer paid by that method. However, this practice could a concern if, for example, a lender portrayed a fixed or tracker rate as being a direct debit discount, to get round MCOB 2.6A-1

Advice

Questions	Answers
If a customer rings up and says they want information on a particular regulated mortgage product, is this advice?	Generally this would be providing information, unless the information provided contains details of the merits or suitability of that product for that particular customer. The MMR has not changed the definition of regulated mortgage advice and The Perimeter Guidance Manual (PERG) explains the distinction between advice and providing information.
If a lender only offers one product, do they still need to give advice on this?	The lender must comply with the new rules. Therefore, in the majority of sales, advice will be required.
What is the difference between the 'best interest' rule and the 'most suitable' rule?	The 'most suitable' rule will not exist under the MMR. We felt that this is a difficult standard to attain and evidence given that at the height of the market there were many thousands of comparable mortgage products available, a number of which could be considered the 'most suitable' for the customer. However, when giving advice under the MMR, firms must take reasonable steps to ensure that the mortgage is suitable for the customer, i.e. it is appropriate to their needs and circumstances. In addition, we have introduced a new overarching requirement for firms to act honestly, fairly and professionally in accordance with the best interests of their customers. This ensures there is a duty of care between the firm and the customer.

Execution-only

Questions	Answers
What constitutes promoting execution only?	Our rules do not prohibit firms from making the customer aware of their execution-only channels, as long the information provided does not steer the customer in one particular direction, i.e. the customer is made aware of all available sales channels and is not encouraged to proceed on an execution-only basis. Our final rules make this clear (see MCOB 4.8A.5R).
Is there a definitive list of contract variations that can be conducted as an interactive execution only sale?	No. However, the Policy Statement does contain a non-definitive list.
Following an execution only sale, the mortgaged property is down-valued at the underwriting stage, resulting in the selected product being no longer available (due to LTV). Can the sale still proceed on an execution only basis, where there are alternative products are available to the customer?	Yes, as long as the customer makes an unassisted choice on the alternative products available and is not steered towards any particular alternative product.
Does the FCA have a view on the level of execution-only business firms should conduct and the key performance indicators they should set?	No. The limit a firm sets will depend on its business model. We recognise that the amount of execution-only business a firm undertakes will vary from time to time. It is not our intention that firms set hard limits, but rather that they take a risk-based approach. Firms should also have a policy in place setting out the steps they will take if they exceed their expected levels of execution-only business. We intend to closely monitor and supervise the levels of execution-only business undertaken by firms and any unexpected spikes will be investigated further.
If a customer rejects the adviser's advice and wishes to proceed on an execution-only. How does this fit with the requirement to ensure execution-only sales are still in the best interest of the customer?	It will be for the firm to determine whether proceeding on an execution-only basis is in the best interests of the customer, based on the individual circumstances of that customer, considering the reasons for the customer rejecting the advice.

What protections will the customer lose when proceeding on an execution-only policy?	The customer will not benefit from the protections of the advised sale rules in MCOB 4.7A. As the customer is taking the risk themselves that the product is not appropriate, it is important the customer is made aware of this. MCOB 4.8A.14R (4) confirms that this is what must be disclosed to the customer.

Arrears and payment shortfalls

Questions	Answers
What are the 'unrecovered fees' in rule 12.4.4R(1)(c)?	Unrecovered fees are fees/charges to customers in payment shortfall, which have not been paid or are bad debt write offs from other customers. Customers paying fees should not cross subsidise those that have not paid fees.
If a customer is late on a payment, does it mean they are in arrears?	The customer may be considered to have a payment shortfall if they have not paid by their contractual 'due date'. However, the due date could be a calendar month, therefore they would not be in payment shortfall until the following month.
Does the FSA/FCA expect our arrears management policy to sit in our responsible lending policy?	No. These can be separate. We will expect you to monitor trends in arrears and to feed this back into your responsible lending policy development.
How frequently are firms expected to review their payment shortfall charges?	Our rules do not stipulate how often firms should review their payment shortfall charges. The rules state that a firm is not able to impose a charge(s) on a customer unless they are objectively able to justify that the charge is equal to or lower than a reasonable calculation of the cost of the additional administration required as a result of that customer having a payment shortfall.
Is capitalisation for the purpose of arrears classified as a further advance, therefore, needing advice to be provided?	No.

Qualifications

Questions	Answers
If an individual does not pass the appropriate qualification to be able to provide advice within 30 months, what are the consequences?	The individual will not be able to provide advice to customers even under supervision. There is some allowance for periods of absence (if the employee is absent for 60 days or more then this time can be added on to the 30-month period). FSA Handbook - Full Handbook.
Are there any plans to raise the level of qualification for the mortgage market?	We are planning to review the mortgage exam syllabus, which has not been reviewed since 2004. However, this review will not take place before implementation. In future we plan to review the syllabus on a more regular basis.
What qualifications are needed under the MMR?	The qualification to provide advice on a regulated mortgage contract is not changing under the MMR. We require firms to obtain a Level 3 qualification, which is the existing standard.
What qualifications do supervisors of mortgage advisers need to hold?	The T&C requirement for supervisors is not changing under the MMR. TC 2.1.4G provides guidance on T&C for supervisors.
Do arrears staff need any qualifications?	We do not impose any qualification standards on staff handling arrears. However, if the firm intends to offer advice as per MCOB 4.7A to customers in arrears, then the qualification requirements will apply to these staff.
Do lenders need to check that any intermediary firms they accept business from hold the relevant qualifications?	There is not requirement for lenders to check the qualification requirements of third parties they accept business from, however, this may form part of the due diligence and fraud controls of the lender.
Do unqualified staff working under supervision need to have every sale overseen?	The T&C requirement is not changing – firms should ensure that they have appropriate risk based monitoring of their staff.

Scope of service/disclosure

Questions	Answers
Are the KFI trigger points relevant for contract variations, as well as new contracts?	The KFI trigger points that relate to contract variations can be found in MCOB 7.6 and these differ according to the circumstances of the variation.
If a customer asks for a KFI for a particular product, as part of information gathering, what does the firm put in section 2 of the KFI – currently this relates to whether it is advised or non-advised, which will not be applicable post 26 April 2014?	If the KFI is given as part of pre-sale information gathering, the firm should state that they are providing information, not advice.

MCOB 11.8.1E, transitional rules and contract variations

Questions	Answers
Does the FCA define a trapped borrower?	There isn't a set definition of a trapped borrower, as the criteria causing them to be trapped will change over time, e.g. according to market conditions and the availability of mortgages to different groups. Therefore, we state that MCOB 11.8.1E applies to a customer that is unable to: • enter into a new regulated mortgage contract or home purchase plan or vary the terms of an existing regulated mortgage contract or home purchase plan with the existing mortgage lender or home purchase provider; or • enter into a new regulated mortgage contract or home purchase plan with a new mortgage lender or home purchase provider.
Do you have to do an affordability assessment before applying the transitional arrangements?	This is not required by the rules, but in practice is likely to be the case - as the lender will need an understanding of the customer's circumstances to assess whether the transaction is in the customer's best interests as required by MCOB 11.7.1R(3).

Interest-only mortgages

Questions	Answers
Is downsizing a credible repayment strategy?	Downsizing is not prevented under the new rules, and may be a credible repayment strategy for some customers, e.g. where the customer has sufficient capital to buy another property (without relying on house price rises).
If a lender accepts downsizing as a repayment strategy for an interest-only mortgage, is a customer declaration that they will downsize sufficient to meet the new requirements?	No, as with all repayment strategies, lenders will need to evidence that, at the time of underwriting, it was credible that the customer would be in a position to downsize at the end of the term, without taking into account any potential rises in house prices. Therefore the lender will need some criteria in their interest-only policy to assess this.
If a customer says they will sell the property at the end of the term and move into rented accommodation, could this be a credible repayment strategy?	It is unlikely that moving into rented accommodation on sale of a property would be a credible repayment strategy.
Do lenders need to obtain any additional evidence from customers at the mid-term check?	There is no requirement for the lender to obtain evidence or re-underwrite the case at the mid-term check. The rule (MCOB 11.6.49R) merely requires the lender to make contact with the borrower, to check if the repayment strategy is still in place, and check whether it is still reasonable to expect that it has the potential to repay the mortgage. So while the lender may choose to request documentary evidence of the repayment strategy from the borrower, there is no specific requirement for them to do so – and therefore they could rely on verbal information provided by the borrower. However, they will need to keep a record of this.
If at the mid-term check a lender discovers that a repayment vehicle has been cancelled by the customer, can the lender switch the customer to a capital and interest mortgage?	We do not prescribe what action a lender should take as a result of a mid-term check. Lenders should, however, consider the Unfair Terms in Consumer Contracts Regulations and treat their customers fairly. The purpose of the mid-term check is to flag potential issues to a customer, while there is still time for them to improve the situation. For example, if they were to make overpayments, this might significantly improve their position by the end of the term. Responsibility for repaying the mortgage at the end of the term remains with the customer.

What do we do if the client does not respond when a lender tries to undertake a mid-term check of the repayment strategy?	Some borrowers will not engage with their lenders about this issue – and this is recognised in the rules (MCOB 11.6.49R (3)). We do not propose to prescribe what 'reasonable efforts' to contact the borrower are. This will be for the lender to determine and demonstrate, i.e. through record keeping. We have amended the record-keeping rules to make this explicit (MCOB 1.6.60R (3) (c)).
When recommending an interest-only equity release product, sometimes the children will repay the interest only part of the mortgage. Who should the affordability check be done on?	The affordability check should be done on whoever is expected to make mortgage payments.
When using the sale of assets as a repayment strategy, how far should your checks go when confirming its credibility?	The lender's policy must set this out. Factors likely to be considered include evidence that the asset exists and is owned by the borrower, its value and the value of any debt secured against it.
Savings, pensions, etc are by their very nature speculative, therefore how can we use these when assessing whether a client has a repayment vehicle for an interest-only mortgage?	The rules require the lender to assess whether the customer has a credible repayment strategy that (as far as it is reasonably able to at the time) has the potential to repay the mortgage. A lender could assess whether savings, pensions, investments, etc have the potential to repay by considering factors such as the amount being saved/invested and the likely rate of return. It is the customer's responsibility to repay their own mortgage – a lender is not responsible if what appears to be a credible repayment strategy at the point of underwriting does not deliver.

Bridging

Questions	Answers
Could an overdraft be a bridging loan, if it has a term of less than 12 months?	Yes, a secured overdraft could meet the definition of a bridging loan. However, whether this will have any practical implications or not will depend on the individual circumstances. We are making an exception from the rules around extending the term of a bridging loan (MCOB 11.6.55R) for secured overdrafts made to business and HNW mortgage customers.
In the circumstances of a bridging loan extension with no additional borrowing, is adding fees to the loan considered to be additional borrowing?	No.

High net worth and business lending

Questions	Answers
Does a firm have to let the client know they can opt out of receiving advice?	The firm is not obliged to offer an execution-only option for these customers, in which case it is not obliged to tell the customer they can opt out of advice.
For a regulated business loan application, where it is a joint application and only one of the applicants benefits from the loan, can the application still be processed under the business lending rules?	The loan must be solely for a business purpose. It is for the lender to set their criteria around this, e.g. in relation to joint borrowers.
When considering a customer's net assets (for the purpose of assessing whether an individual meets the definition of a high net worth mortgage customer) how should you treat property that is held in joint names?	This is for the lender to decide. However, in the case of a property held by 'joint tenants' both owners are deemed to own 100% of the value of the property. Therefore, the full value of the asset could be considered for the purposes of an individual meeting the definition of a high net worth mortgage customer. If the property is held by 'tenants in common', the actual proportion of the individual's share of the property could be considered.

Mortgage professionals

Questions	Answers
Would an administrator in a mortgage firm be a mortgage professional?	In general an administrator would not meet the required definition of a mortgage professional. The definition of a mortgage professional requires the customer to hold, or have recently held, a professional position, which requires knowledge of the transaction or services envisaged. In addition, the firm needs to reasonably believe that the customer is capable of understanding the risks involved with the transaction(s).
If a mortgage professional is looking to consolidate debt, can they still opt to proceed execution-only, without first receiving advice?	No. Where a mortgage professional is considered to be a vulnerable customer then they must receive advice in the first instance.

Prudential

Questions	Answers
Will the reporting requirements change due to the new prudential rules?	Yes. The FCA is due to publish a Consultation Paper on data reporting requirements in Q2 2013, to discuss the data needed to supervise the mortgage market following implementation of the MMR. This will include the data we need to supervise the new prudential requirements for non-deposit taking mortgage lenders.

Miscellaneous

Questions	Answers
In Scotland there are debt payment schemes rather than IVAs. Does the definition of a credit-impaired individual cover this?	The definition of a credit-impaired customer does not explicitly refer to the different schemes in operation in Scotland. However, we would expect the definition to apply to the equivalent scheme, e.g. bankruptcy would be sequestration etc.
Can we rely on a solicitor's undertaking to repay a customer's debts, when dealing with a credit-impaired customer who is looking to consolidate debts?	We are not prescriptive about what reasonable steps firms should take to ensure that a credit-impaired customer's debts are repaid when consolidating debt. Firms will need to make their own judgements on whether it is reasonable that the debts will be repaid through the method(s) they adopt.