Office of the Deputy Prime Minister
Creating sustainable communities

Mortgage Sales Guidance for Local Authorities and Registered Social Landlords

housing

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SECTION 1

Introduction and Application

Summary

This Mortgage Sales Guidance will only apply to mortgages granted by a housing association or local authority where:

- the mortgage is secured as a **first** charge over the property; and
- the customer is living or intends to live in the property.

Additional consumer protection requirements will apply to equity mortgages for older homeowners.

The Consumer Credit Act 1974 may apply to non-exempt mortgages that form a second or subsequent charge over the property.

Where the mortgage is arranged exclusively via the post, telephone or internet, the Distance Marketing Regulations may apply.

A new framework for home improvement finance

1.1 The Regulatory Reform (Housing) (England and Wales) Order 2002 created a new framework for local housing authorities to provide financial and other assistance for home repair and improvement. The overall objective is to improve the targeting of funds to those most in need. This has led to a shift away from providing a broad range of home improvement grants to new strategies involving loan finance. This Mortgage Sales Guidance sets out procedures that both Registered Social Landlords (commonly known as housing associations (HAs)) and local authorities (LAs) must follow when providing mortgage finance under these new powers. The guidance includes:

- good practice standards for all communications with customers;
- responsible lending requirements;
- pre-application information;
- information at mortgage offer stage and during the lifetime of the mortgage;
- additional consumer protection requirements for equity mortgages;
- the fair treatment of customers in financial difficulties.

Mortgage Regulation and the exemption for HAs and LAs

1.2 From 31 October 2004, the Financial Services Authority (the FSA) has regulated the sale of first charge mortgages by mainstream lenders. This new regime adopts a 'cradle to grave' approach throughout the relationship between customer and lender, including the regulation of mortgage advertisements, the application process, information provided during the term of the mortgage and finally what happens should the customer fall into arrears with the repayments.

1.3 Under the Financial Services and Markets Act 2000 (Exemption) (Amendment) (No2) Order 2003, both LAs and HAs offering mortgages have been exempted from the new FSA regulatory regime, but on the basis that a **'comparable'** quality of service is provided to customers. To ensure that both HAs and LAs meet the terms of this exemption, specific requirements need to be introduced on how customers will be treated not only during the mortgage application stage but also throughout the duration of the mortgage and if the customer subsequently experiences financial difficulties. This guidance sets out those requirements.

1.4 It should be noted that the exemption from FSA regulation **only** applies to HAs and LAs. Therefore, where mortgages are being offered other than via an HA/LA, the organisations would need to comply with the FSA's regulatory framework (see www.fsa.gov.uk). Where a mortgage is being offered by a mainstream lender via a partnership approach with an HA or LA, the lender would need to comply with FSA regulation for all their first charge mortgages.

What mortgages are currently available via HAs and LAs?

1.5 Following the introduction of the Regulatory Reform Order in July 2003, some HAs/LAs are already developing mortgage portfolios that include a variety of options:

- equity release mortgages financed direct by the HA/LA and repayable only on disposal of the property;
- interest-only mortgages;
- rolled-up interest mortgages;
- capital and interest repayment mortgages;
- mortgages financed in partnership with mainstream mortgage lenders.

1.6 Many of these mortgages are specifically targeted at homeowners who are over 60 years old, requiring finance to carry out repairs to their properties. This is the main client group that would have previously applied for home improvement grants under the earlier regime. Some of these homeowners either cannot access mortgage finance with other mainstream lenders due to previous poor credit ratings or low incomes;

alternatively, they may choose to borrow via the HA/LA on the basis of greater trust. However, the mortgage products available are not limited specifically to older homeowners and many HAs and LAs are providing financial assistance to a broad range of homeowners, across all age groups. One of the common characteristics amongst these homeowners is that many have little experience of what is involved in taking out a mortgage; therefore, the Guidance includes robust customer protection requirements to ensure that mortgages are only offered where they are best-suited to the customer's needs.

1.7 Several HAs and LAs are also working in partnership on schemes with a variety of organisations providing housing assistance including, for example, the Home Improvement Trust and Home Improvement Agencies.

What mortgages are covered by the Mortgage Sales Guidance?

1.8 This Mortgage Sales Guidance will **only** apply to mortgages that comply with the following definition:

(a) an HA or LA provides mortgages finance to a customer; and

(b) the obligation of the customer to repay the mortgage is secured by a **first** legal mortgage over the property in the United Kingdom; and

(c) the customer is living or intends to live in the property.

1.9 Therefore the key criteria are that:

- the loan from the HA or LA is a first charge over the property; and
- the customer intends to live in the property.

1.10 In discussions with customers, HAs/LAs will need to find out early on whether there are any existing mortgages secured over the property and therefore whether the new mortgage must be administered in accordance with the Mortgage Sales Guidance. If the mortgage will not be a first charge, then the administration of the mortgage will **not** need to comply with this Guidance.

How does the Mortgage Sales Guidance work?

1.11 The Guidance sets out requirements that will govern the various stages of the mortgage application process and the on-going administration of the loan:

(a) Core Standards that will apply to all aspects of providing a mortgage and contact with the customer.

(b) Pre-Application Process – on first contact, providing the customer with a simple Customer Information Document (CID) setting out brief information about the HA/LA for example, what assistance will the customer receive in choosing a loan, any fees that will be payable and how to make a complaint.

(c) Mortgage Offer – providing detailed information via a Mortgage Offer Document (MOD) about the mortgage, to enable the customer to make an 'informed' decision about whether to accept the mortgage offer.

(d) Equity Mortgages – introducing additional consumer protection provisions for older homeowners taking out equity mortgages.

(e) Information provided during the term of the mortgage – including the provision of repayment information at the beginning of the mortgage and annual statements.

(f) Financial Difficulties – the requirement to treat customer fairly should they fall into arrears or have a shortfall debt.

(g) Distance Marketing – additional information to be provided where the customer takes out the mortgage exclusively via the telephone or internet.

(h) Advertising and the APR – what requirements need to be met under the existing Advertising and Total Charge for Credit Regulations. With certain mortgage products, there may be insufficient information to calculate the APR, for example, if the duration of the loan is unknown at the time the agreement is made. In these cases, the Office of Fair Trading has the power to issue a Direction, allowing alternative information to be provided to the customer. Further information on this approach is included in Section 11.

Loan Products: Variation in requirements

1.12 The Guidance distinguishes between two separate categories of mortgage:

(a) Equity mortgages

(b) All other mortgage products

1.13 Equity mortgages are defined as:

"Loan products where:

(a) eligibility for the mortgage is restricted to older customers above a specific age; **and**

(b) repayment of the loan (including interest, if outstanding) will not arise until one or more of the following arises:

- the death of the customer;

- the customer leaves the mortgaged property to live elsewhere and has no reasonable prospect of returning (for example, moving to residential care);
- the customer acquires another property which will be his main residence;
- the customer sells the mortgaged property;
- the lender takes possession of the property under the terms of the mortgage contract; **and**

(c) while the customer continues to live in the mortgaged property as his main residence:

- no instalment repayments of the capital and no payment of the interest on the capital are due; or
- although interest payments may become due, no full or partial repayment of the capital is due; or
- although interest payments and partial repayment of the capital may become due, no full repayment of the capital is due."

1.14 Many of the mortgages offered by HAs and LAs will meet the definition of an equity mortgage. Due to the nature of these mortgages and the fact that any repayment of the mortgage will invariably only occur on the ultimate sale of the property, additional consumer protection requirements have been included as part of the sales process in the Guidance.

1.15 Where a HA/LA offers an equity mortgage that does not fully comply with this definition (for example, it is available to a younger homeowner), it will be at the discretion of the HA/LA whether the additional consumer protection requirements are adopted. HAs/LAs may choose to treat all applications for equity mortgages in accordance with the additional protection requirements, especially if customers are potentially vulnerable or have little knowledge of financial affairs.

All other mortgage products

1.16 All other mortgage products offered by HAs and LAs that do not meet the definition of an equity mortgage, will need to comply with separate requirements set out in this Guidance.

1.17 Table 1.1 below sets out which aspects of the Guidance apply to different loan products.

Table 1.1 **Application of the Guidance to equity mortgages and all other mortgage products**

SECTION	EQUITY MORTGAGES	ALL OTHER MORTGAGE PRODUCTS
Section 2	Y	Y
Section 3	N	Y
Section 4	N	Y
Section 5	Y	N
Section 6	Y	N
Section 7	Y	Y
Section 8	Y	Y
Section 9	Y	Y
Section 10	Y	Y
Section 11	Y	Y

Will the Consumer Credit Act 1974 apply to any of the mortgages offered by HAs and LAs?

1.18 Where a mortgage granted by either a HA or LAs does not meet the criteria set out in paragraphs 1.8 to 1.9 above, the mortgage may need to comply with the Consumer Credit Act 1974. Where this is the case, the HA or LA may want to obtain independent legal advice on the correct procedures and documentation to be adopted.

Do HAs and LAs have to comply with the Financial Services Distance Marketing Regulations?

1.19 The Financial Services Distance Marketing Regulations set out what information must be given to customers when they buy financial services in a completely non face-to-face transaction from beginning to end, for example, over the telephone, internet, fax or mail. The original aim of the Regulations was to give consumers greater confidence when buying financial services from companies based in other countries in the European Union. Under the Regulations, consumers will receive standard information irrespective of which EU country is concerned.

1.20 These Regulations will also apply to any application for a mortgage where the HA/LA carries out the transaction in a non-face-to-face format, for example, over the internet or telephone. Such an approach may be relatively rare at this stage as most HAs and LAs actually interview the homeowners applying for the mortgages; however, practice may change in the future with greater use made of applications undertaken exclusively over the internet or telephone.

Providing assistance to the customer

1.21 While establishing a framework for assisting the customer with the mortgage application process, the Guidance does **not** include an option for the customer to receive formal advice and a recommendation on which mortgage product best suits their situation. This approach has been adopted because the Guidance does not incorporate a mandatory training requirement for mortgage advisers, as is currently the case under the FSA regime. Instead, the Guidance allows LA and HA staff to tell customers about the mortgage products they have available based on the customer's needs and circumstances and it would be for the customer to make the decision on how to proceed. Where a customer requires additional assistance, the LA/HA may decide to refer the customer to an independent financial adviser. As the LA/HA mortgage market grows in the future, there may be greater scope for developing a formal training scheme for advisers.

Compliance with the guidance

1.22 This Guidance has been prepared to ensure that customers receive a comparable level of service and protection to that provided under the FSA regime, when taking out a mortgage with a HA/LA. Should HAs and LAs fail to adhere to the good practice set out in the guidance, the implication is that the Government may choose to extend FSA regulation to both HAs and LAs, irrespective of the fact that this is still very much a developing mortgage market. This position will be kept under review in consultation with regulatory organisations and ombudsman schemes.

SECTION 2

Mortgage Administration Standards

Summary

This section sets out the Mortgage Administration Standards that must be adopted by HAs and LAs when providing mortgage finance. They provide both core standards that apply to all contact with customers and a benchmark against which HAs and LAs can measure whether their procedures are set at an appropriate level.

The Standards

STANDARD ONE

Lending business must be conducted in an honest and responsible way, with due care and skill.

2.1 When proving mortgage finance, HAs and LAs must ensure that their lending procedures are:

- carried out in an honest and responsible way;
- do not give rise to any conflict with their duty to customers;
- do not result in any unfair treatment of customers.

2.2 Both LAs and HAs must adopt responsible lending practices across all the mortgage products they offer and put in place and operate in accordance with a written policy for responsible lending. This policy should set out the eligibility criteria for customers applying for a mortgage and, where a mortgage requires repayments to be made on a regular basis, how account will be taken of the customer's ability to meet those repayments.

Example 1

2.3 HAs and LAs should ensure that any interview methods do not leave customers feeling pressurised into taking out a mortgage to fund home improvement works.

Example 2

2.4 There may be certain circumstances where HAs/LAs work with other third parties as part of the mortgage application process. For example, an LA may work with other housing advice agencies who may visit the prospective customer to obtain the relevant information to apply for a mortgage. Where this is the case, the LA will need to demonstrate that it was reasonable to rely on the information provided to it by the other person or third party.

STANDARD TWO

Lending procedures must recognise the interests of the customer and treat them fairly

2.5 Treating customers 'fairly' is an important theme underpinning the Mortgage Sales Guidance and applies to all dealings with the customer, throughout the period of the mortgage.

Example 1

2.6 HAs/LAs must not seek to exclude or restrict any of the duties they owe to their customers under this Guidance in any contact and communication with the customer.

Example 2

2.7 Mortgage application procedures must not commit (or leave the customer feeling that they are committed) to taking out a mortgage before they have had an opportunity of considering all the information provided in the Mortgage Offer Document (MOD). This could arise if the customer was presented with the MOD and the mortgage deed at the same time, with a requirement to sign at that stage when there was no urgent need for this to happen.

STANDARD THREE

All contact and communication with customers must be clear, fair and not misleading.

2.8 HAs and LAs must take reasonable steps to ensure that all contact and communication with customers is clear, fair and not misleading. This will include any oral, written statements, telephone calls and any correspondence.

Example 1

2.9 The prominence of relevant information (using text size and positioning) can play a key role in ensuring that a communication meets the standard.

Example 2

2.10 Customers should not be given misleading information regarding the availability of mortgage products, for example, customers should not be told that a particular mortgage product is only available for a limited period, if this is not really the case.

STANDARD FOUR

Reasonable care must be taken to ensure that any mortgage offered to the customer is suitable for them, based on their needs and circumstances.

2.11 HAs and LAs must take reasonable steps to obtain from customers all the information necessary to assess whether a mortgage product would be suitable for them.

Example

2.12 If a customer is unable to meet regular mortgage repayments taking into account information obtained about their income, this would indicate that the customer might be more suited to an equity mortgage where there are no repayments during the life of the mortgage and the mortgage is repaid on the disposal of the property.

Record keeping and access to records

2.13 To ensure that compliance with the Mortgage Sales Guidance can be monitored, it is essential that adequate records of loan transactions are maintained by both HAs and LAs.

How long do records need to be kept?

2.14 Table 2.1 below, sets out for how long records connected with a mortgage application and communications with the customer must be retained. LAs and HAs may choose to keep records for longer periods, for example, where there is a possibility of a customer complaint.

Is there a prescribed format for keeping records?

2.15 There is no prescribed format for retaining the records; however, all records must be readily accessible and therefore available for inspection within 10 business days of any request to view the documentation being received. If the information is kept in electronic format, it must reflect the original information and not be subject to any unauthorised or accidental alteration.

Table 2.1 **Record Keeping Requirements**	
Where the mortgage application does not proceed, records of the mortgage transaction do not need to be retained.	
RECORD TO BE RETAINED	RETENTION PERIOD
1. Customer information obtained as part of the mortgage application process (para. 3.18 and 5.16)	1 year from the date on which the mortgage is redeemed
2. Why the HA/LA has concluded that a mortgage is suitable for a customer (para. 3.18 and 5.16)	1 year from the date on which the mortgage is redeemed
3. Copy of MOD issued to customer (para. 4.31)	1 year from the date on which the mortgage is redeemed
4. Copy of EMOD issued to customer (para. 6.23)	1 year from the date on which the mortgage is redeemed
5. Information provided to the customer at the start of the mortgage (para. 8.6)	1 year from the date on which the mortgage is redeemed
6. Record of dealings with a customer in arrears or with a shortfall debt (para. 9.8)	1 year from the date on which the mortgage is redeemed
7. Copies of advertisements and promotions for mortgages (para. 10.4)	5 years from the date on which the advertisement was last communicated

SECTION 3

Pre-Mortgage Application Procedures

Summary

Prior to making a mortgage application:

- the customer must receive information about the service being offered by the HA/LA;
- the HA/LA must take reasonable steps to ensure that the mortgage would be suitable for the customer, based on their individual needs and circumstances.

This section sets out what information must be provided to the customer and the factors that must be taken into account when assessing a mortgage product's suitability for a customer.

Customer Information Document (CID)

3.1 When first making contact with a customer, the HA or LA must provide the customer with information on a number of key issues, including:

- who will be providing the mortgage;
- any fees that will be charged and refund policy;
- how to make a complaint.

3.2 This information can either be provided on a separate Customer Information Document (CID) or incorporated into literature produced by the HA or LA on their mortgage products. The remainder of this section refers specifically to the CID, however where the information is included within alternative literature, the same terminology must be adopted for each of the categories of information prescribed below including headings and text (apart from the overall heading 'Customer Information Document'). The information must also be provided on making first contact with the customer. The aim of the CID is to provide the customer with early confirmation that the mortgage will be granted by the HA/LA and not by any other lender, what charges might be incurred and what recourse would be available if the customer was unhappy with the mortgage application procedures adopted.

Prescribed information for inclusion in the CID

3.3 The information included in the CID forms a baseline standard for all HAs and LAs. Each HA/LA can reproduce their own CID, adopting their own house style and brand, however it must include all the prescribed information in a clear format. Additional information can be included as part of the CID, as long as this does not detract from the key information included in this document. The customer must receive the CID in a durable medium (for example, paper, floppy disk, CD-Roms, DVD, e-mail) so that the document can be read or referred to at a later stage. A sample CID (setting out the prescribed information and text) is available at the Annex to this section.

Heading(s)

3.4 The document must include the heading 'Customer Information Document' and can incorporate the HA/LA logo. All the other headings listed below must also be included in the CID. In addition, the first section must include an address of the LA/HA where the customer can make contact, as part of the mortgage application process.

Whose mortgages do we offer?

3.5 The customer needs to know who will be granting the mortgage. This information confirms that the only mortgages offered are those provided directly by the HA/LA. This should avoid any potential confusion regarding the availability of mortgage products being provided by other third parties, for example, mainstream mortgage lenders.

The text should be:

"[Name of HA/LA] will only offer its own mortgages."

What assistance will we provide you with?

3.6 The customer should know at the outset what assistance they will receive from the HA/LA as part of the mortgage application process.

The text should be:

"We will tell you about the mortgage products we have available and whether they are suitable for you, based on your needs and circumstances. You will then need to make your own choice about how to proceed."

What fees will you have to pay?

3.7 The CID should inform the customer whether any fees will be levied or may be levied as part of the mortgage application process and when they will be payable. At Mortgage Offer stage, the customer will again receive notification of the fees charged and a tariff of charges that will apply during the mortgage term.

The text should be:

☐ No fee

☐ A fee [of £[] payable for {description of the fee, for example, valuation or legal costs}]

[A description of when any fees will be payable]

3.8 The appropriate box should be populated to indicate whether or not fees will be incurred.

Refund of Fees

3.9 The CID must confirm whether any fees will be refunded, for example, if the customer decides not to accept the Mortgage Offer. The LA/HA should include a statement which reflects their refund policy if any fees will be levied. If no fees are charged as part of the mortgage application process, this section can be excluded from the CID.

What to do if you have a complaint

3.10 The customer must be provided with information on where they can direct any complaint they may have, in connection with taking out a mortgage.

The text should be:

"If you wish to make a complaint, please contact us:

[Name of HA/LA],
[Complaints Department or other appropriate title]
[Address]
[Telephone Number]

If we cannot settle your complaint with us, you may be entitled to refer it to [the Local Government Ombudsman] [Public Services Ombudsman for Wales] [the Housing Ombudsman Service]."

Pre-Mortgage Application: factors to consider

IS THE MORTGAGE SUITABLE FOR THE CUSTOMER?

3.11 Before making an application, the HA/LA must take reasonable steps to ensure that the mortgage would be suitable for the customer. A mortgage will be suitable if, having considered the information provided by the customer (and any other information the HA/LA should reasonably be aware of) the HA/LA has reasonable grounds to conclude that:

- the customer can afford to take out the mortgage;
- the mortgage product meets the customer's needs and circumstances.

3.12 The criteria to be adopted when looking at whether a mortgage is suitable for the needs and circumstances of the customer include whether:

- the customer's requirements meet the eligibility criteria of a mortgage product;
- the customer has a preference for a particular term of the mortgage or repayment method (for example, interest-only);
- the customer has a preference or need for stability in the amount of any repayments.

3.13 A mortgage application should **not** be made if there is no mortgage product offered by the HA or LA that would meet the customer's needs and circumstances.

CAN THE CUSTOMER AFFORD THE MORTGAGE?

3.14 When assessing if a customer can afford to take out a mortgage which requires regular repayments, consideration must be taken of:

- information the customer provides about his income and expenditure and any other resources available; and
- any likely change to the customer's income, expenditure and resources.

3.15 The HA/LA must inform the customer that their assessment of affordability is based on:

- current interest rates that might rise in the future;
- the customer's current circumstances, which might change in the future.

3.16 Where the HA/LA offers a range of mortgage products and several of these products are suitable for a particular customer, it should give the customer details of all these including the one that is least expensive for the customer taking into account the pricing elements identified by the customer as being most important to him.

Record keeping

3.17 A record must be kept of:

- the customer's information (including their needs and circumstances) obtained as part of the application process;
- why the HA or LA has concluded that a particular mortgage is suitable for a customer.

3.18 This record must be kept for one year from the date on which the mortgage is redeemed.

ANNEX TO SECTION 3

Customer Information Document

See Section 3 for guidance on the completion of this document

Name HA/LA]

Address

(see paragraph 3.4)

1. Whose mortgages do we offer?

[Name of HA/LA] will only offer its own mortgages.

(see paragraph 3.5)

2. What assistance will we provide you with?

We will tell you about the mortgage products we have available and whether they are suitable for you, based on your needs and circumstances. You will then need to make your own choice about how to proceed.

(see paragraph 3.6)

3. What fees you will have to pay?

No Fee		—
Fees	[of £[ ] payable for [description of the fee, for example, valuation or legal costs]]	—

(see paragraph 3.7 & 3.8)

4. Refund of Fees

[HA/LA to include brief statement of refund policy where fees are charged]

(see paragraph 3.9)

5. What to do if you have a complaint

If you wish to make a complaint, please contact us:

[Name of HA/LA]
[Complaints Department or other appropriate title]
[Address]
[Telephone Number]

If you cannot settle your complaint with us, you may be entitled to refer it to the [Local Government Ombudsman] [Public Services Ombudsman for Wales] [Housing Ombudsman Service]

(see paragraph 3.11)

SECTION 4

Information at Mortgage Offer Stage

Summary

If the HA/LA makes a mortgage offer, the customer must receive a Mortgage Offer Document (MOD). The MOD includes key information about the mortgage, to enable the customer to check the features and price of the mortgage before deciding whether to accept the offer. The HA/LA must emphasise to the customer the importance of both reading and understanding the MOD.

Mortgage Offer Document (MOD)

4.1 Following the mortgage application process, if the HA/LA intends to offer a mortgage to the customer, the HA/LA must provide the customer with a Mortgage Offer Document (MOD). The aim of the MOD is to provide the customer with important information about the mortgage, how much it will cost, what fees will be charged and other key features so that the customer can make an informed decision whether to accept the offer. The MOD must be provided in good time to enable the customer to consider it properly. A sample format for the MOD is included in the Annex to this section.

4.2 The information in the MOD forms a baseline standard for all HAs and LAs. Each HA/LA can reproduce their own MOD adopting their own house style and brand, however it must include all the prescribed information in a clear format. Additional information can be included in the MOD, as long as this does not detract from the prescribed information. The customer must receive the MOD in a durable medium so the customer can read and refer back to the Document at a later stage. The LA/HA must emphasise to the customer the importance of both reading and understanding the MOD. A new MOD must be issued if a further advance is made to the customer, the terms of the mortgage are varied or the parties to the mortgage change in the future.

Prescribed information for inclusion in the MOD

HEADING(S)

4.3 The MOD must include the heading 'Mortgage Offer Document' and can include the HA/LA logo and name of the mortgage product. All the other headings listed below in connection with the prescribed information must also be included. In addition, the first section of the MOD must list:

- the customer's name;
- the date the MOD was produced;
- details of how long the mortgage offer is valid for.

4.4 This will inform the customer of how long they have in which to decide whether or not to accept the mortgage offer.

The text should be:

"Customer Information for: [insert customer's name]

Date Produced: [insert date]

[insert details of how long the offer is valid for]"

DO YOU HAVE TO ACCEPT THIS MORTGAGE OFFER?

4.5 Customers may not be aware of how the mortgage offer affects them and whether they are obliged to accept it. This information confirms that the customer is not bound by the offer until certain events have occurred, for example, the customer has also signed the legal charge and the mortgage funds have been paid to the customer. HAs/LAs may want to list alternative events/signing of documents, after which the customer will be bound by the mortgage offer.

The text should be:

"You are not bound by the terms of this Mortgage Offer Document until [insert relevant circumstances including the names of any documents that must be signed, for example, 'You have signed the legal charge and the funds have been released for your mortgage']."

WHAT ASSISTANCE HAVE WE GIVEN YOU?

4.6 The customer must receive confirmation of what assistance the HA/LA has provided as part of the mortgage application process (see paragraph 3.6).

The text should be:

"We have told you about the mortgage products we have available based on your needs and circumstances. You will need to make your own choice on whether to proceed."

WHAT INFORMATION YOU HAVE GIVEN US ABOUT YOUR NEEDS

4.7 It is useful for the MOD to confirm some of the information that the customer has provided. This reinforces the fact that the MOD has been provided on this basis and taking into account these circumstances. This can include details such as:

- the amount of mortgage required by the customer;
- the value of the property on which the mortgage will be secured.

ABOUT THIS MORTGAGE

4.8 The MOD must include a brief description of the mortgage for the customer. This should include (where applicable):

- a general description of the mortgage product, for example, interest-only mortgage, shared appreciation mortgage;
- whether there will be regular repayments;
- a description of the interest rate type (for example, whether it is a standard variable rate, fixed rate, discounted rate, capped rate);
- the rate of interest that applies to the mortgage;
- how long the rate will apply, if it is only for a fixed period;
- notice that if the mortgage is interest-only, the full amount of the original debt will remain outstanding;
- the fact that the mortgage will be repayable on the disposal of the property;
- the length of the mortgage term;
- a brief description of any restrictions that apply to the availability of the mortgage, for example, if it is only available to certain customers.

4.9 Where the mortgage is a **shared appreciation mortgage**, the following information must be included:

The text should be

"This mortgage involves [Name of HA/LA] taking a percentage share in any increase in the value of your property [insert details of when the share will become payable, for example, 'when this mortgage comes to an end or is terminated early].' The amount [name of the HA/LA] will take depends on any increase in the value of your property.' [Include if relevant: 'If your property falls in value between now and the end of this mortgage you will be required to pay [add details of what the customer will be required to pay]."

4.10 In addition, the MOD must include an explanation of how the amount of the share payable by the customer is calculated and how any increase in the property's value will be dealt with. For example, if the property's value increases by 7% over the life of the loan, the MOD must explain what proportion of that 7% increase will be payable to the HA/LA and what proportion (if any) to the customer. In some cases, the whole amount of any increase in value may be payable to the HA/LA. In other cases, the amount payable to the HA/LA may be capped (for example, at 5%). If the amount of the increase in value which may be payable to the HA/LA cannot go above a capped level (in this example, 5%), the MOD must explain this and include a cash example of the share which may be payable to the HA/LA. If the amount of increase in value payable to the HA/LA is not capped at a certain level, the MOD should show three cash examples of how much may be payable to the HA/LA. These three examples should assume a 1%, 5% and 10% increase in the value of the property.

TOTAL COST OF THIS MORTGAGE

4.11 The customer will need to have an indication of the overall cost of the mortgage, including any interest and fees payable, together with an APR for comparison.

The text should be:

"The total amount you must pay back including the amount borrowed is £[insert details]

The overall cost for comparison is [insert details] %APR."

(a) Interest-only mortgages
Where the mortgage is interest-only, this section should also remind the customer that they will still owe the amount of the loan at the end of the mortgage term and will need to make arrangements to repay this, if this is not linked to the disposal of the property.

(b) Rolled-up interest mortgages
For those mortgages where all the interest is rolled-up and repaid as a lump sum at the end of the mortgage term, the APR and the total amount payable must be based on the total amount that the customer would owe at the end of the term.

(c) Shared Appreciation Mortgages
For shared appreciation mortgages, it is not possible to predict the total amount to be repaid at Mortgage Offer stage. Therefore, the total amount should include the mortgage amount and any fees charged, together with the following text:

"The APR and the total amount you must pay do not take account of the share that [insert name of HA/LA] takes in any increase in the value of your property."

WHAT REGULAR REPAYMENTS WILL YOU NEED TO MAKE?

4.12 The customer will need to know what repayments (if any) need to be made and at what intervals, for example, if the repayments are monthly and how much they will be.

(a) Mortgage amount
4.13 The mortgage amount must be included in this section, inclusive of any fees and charges.

(b) Regular Repayments

4.14 Where the mortgage has a regular repayment plan, information must be provided on the amount of the repayments and when they are due, for example, monthly.

(c) Deferred interest mortgages

4.15 For deferred interest mortgages, the MOD must set out for each year or part year that the interest rate charged on the mortgage is deferred, the following information:

- Interest deferred – the percentage of interest deferred based on the rate charged when the MOD was issued.
- Amount of deferred interest added to the mortgage – setting out the amount in cash terms as a result of deferring the payment of interest.
- The amount outstanding on the mortgage before any deferred interest is added.
- The amount outstanding on the mortgage with the deferred interest added.
- Confirmation that where the interest rate is variable, the amounts listed could be considerably different.
- Confirmation that no regular payments are necessary.

The text should be:

'You [do not need to/cannot] make regular payments on your mortgage.'

(d) No regular repayment plan

4.16 Where the mortgage product does not have a regular repayment plan

The text should be:

"You [do not need to/cannot] make regular repayments on your mortgage."

WHAT FEES WILL YOU HAVE TO PAY?

4.17 The customer must be advised of any fees payable to the HA/LA (together with any other fees payable to a third party), in connection with the mortgage application, for example, any legal or valuation fees. The information must include:

- a description of the fee;
- the amount payable;
- when the fee is payable;
- whether or not the fee is refundable.

4.18 If no fees are payable, then a statement of this fact should be included in the MOD. If insurance premiums are payable as a condition of the mortgage, details can be included in this section.

WHAT ARE THE RISKS OF TAKING OUT THIS MORTGAGE?

4.19 The customer must be made aware of the potential risks associated with taking out the mortgage, for example, whether the HA/LA is able to take possession of the property on default or if there is a no-possession guarantee. Where applicable, the following statement(s) should also be included:

(a) Mortgages with a regular repayment plan

4.20 To ensure that all customers think about the risks associated with taking out a mortgage, the MOD should include a general reminder that the repayments will still need to be met if the customer loses his income.

The text should be:

"You will still need to pay your mortgage if you lose your job or illness prevents you from working. Think about whether you could do this."

(b) Variable interest rate

4.21 If the mortgage has an interest rate that can vary over the mortgage term:

The text should be:

"The payments in this Mortgage Offer Document could be very different if interest rates change.

WHAT HAPPENS IF YOU NO LONGER WANT THIS MORTGAGE?

4.23 The customer will need to know what will happen if they take out the mortgage and then no longer want it. The MOD must list any early repayment charges that might apply if the customer repays the mortgage early. In addition, details of whether the mortgage is portable on moving house should also be included.

4.24 If there are no early repayment charges and the mortgage cannot be transferred to another property, the MOD must include a clear statement of this fact and confirmation that the mortgage will need to be repaid in full.

CONTACT DETAILS

4.25 The MOD must include the name, address and telephone number for a contact point at the HA/LA who can deal with any enquiries regarding the information in the MOD. Additional contact details can be included, for example, an email address at the discretion of the HA/LA.

RISK WARNING

4.26 Where applicable, the risk warning must be prominently displayed towards the end of the MOD. The warning provides an additional notice to the customer of what could happen if, for example, any repayments are not met.

(a) No Possession Policy

4.27 If the mortgage product does not allow the HA/LA to take possession of the property, a risk warning does not need to be included in the MOD.

(b) Regular repayment plan

4.28 If the customer's property can be taken into possession on default of the repayments, the following risk warning should be included at the end of the MOD.

The text should be:

Your home may be repossessed if you do not keep up the repayments

(c) Shared Appreciation Mortgages

4.29 If the mortgage is a shared appreciation mortgage, the following risk warning should be included.

The text should be:

You will need to pay this share in the value of your property either as a lump sum or through extra loan repayments. Think carefully about whether you can afford this.

TARIFF OF CHARGES

4.30 When an HA/LA issues a Mortgage Offer Document, it must also provide a tariff of any charges that could be incurred under the mortgage contract. The tariff can either be included as an integral part of the mortgage offer or provided separately along with the MOD. If no further charges will be payable, a tariff does not need to be provided.

RECORD KEEPING

4.31 The HA/LA must make an adequate record of each MOD issued to a customer. This record must be retained for one year from the date on which the mortgage is redeemed.

ANNEX TO SECTION 4

Mortgage Offer Document

See Section 4 for guidance on the completion of the Mortgage Offer Document

Customer Information for: [insert customer's name]

Date Produced: [insert date]

(Insert details of how long the offer is valid for)

(see paragraphs 4.3 & 4.4)

1. Do you have to accept this mortgage offer?

You are not bound by the terms of this Mortgage Offer Document until [insert relevant circumstances including the names of any documents that must be signed, for example 'You have signed the legal charge and the funds are released for your mortgage.']

(see paragraph 4.5)

2. What assistance have we given you?

We have told you about the mortgage products we have available based on your needs and circumstances. You will need to make your own choice on whether to proceed.

(see paragraph 4.6)

3. What information you have given us about your needs

Example: — The amount of mortgage required by the customer.

— The value of property on which mortgage will be secured.

(see paragraph 4.7)

4. About this Mortgage

Examples:
— general description of mortgage, e.g. Shared Appreciation Mortgage
— description of interest rate type and rate of interest, e.g. Fixed rate at 5%
— whether there will be regular repayments
— if the loan will be repayable on disposal of the property

(see paragraphs 4.8 to 4.10)

5. Total cost of this Mortgage

The total amount you must pay back including the amount borrowed is: £ [insert details]

The overall cost for comparison is: [insert details] % APR

(see paragraph 4.11)

6. What regular payments will you need to make?

Example:	Total loan amount:	£ (insert amount)
	Monthly repayments:	£ (insert amount)

(see paragraphs 4.12 to 4.16)

7. What fees will you have to pay?

Example: Include description of fee and the amount, when it will be payable and if refundable.

(see paragraphs 4.17 to 4.18)

8. What are the risks of taking out this mortgage?

Example: The payments in this mortgage offer could be very different if interest rates change.

(see paragraph 4.19 to 4.22)

9. What happens if you no longer want this mortgage?

Example:

- No early repayment charges will be made if the mortgage is repaid early, before the end of the mortgage term.
- This mortgage is not portable on moving property.
- The full amount of the mortgage will need to be repaid.

(see paragraphs 4.23 to 4.24)

10. Contact Details

Example: if you have any queries in connection with this Mortgage Offer Document please contact:

Name:

Address:

Tel. number:

(see paragraph 4.25)

ANY RISK WARNING APPLICABLE

For Example:

- **YOUR HOME MAY BE REPOSSESSED IF YOU DO NOT KEEP UP REPAYMENTS ON YOUR MORTGAGE.**

(see paragraphs 4.26 to 4.29)

SECTION 5

Equity Mortgages: Pre-Mortgage Application Procedures

Summary

Prior to making a mortgage application for an equity mortgage:

- the customer must receive information about the service being offered by the HA/LA;
- the HA/LA must take reasonable steps to ensure that the equity mortgage would be suitable for the customer, based on their individual needs and circumstances.

This section sets out what factors must be taken into account in assessing whether an equity mortgage suits the customer's circumstances.

Introduction

5.1 Equity mortgages allow homeowners to access part of the equity in their property, while they continue to live there. Together, low interest rates and rising house prices have allowed increasing numbers of homeowners to withdraw equity. Many LAs/HAs have already developed equity mortgages to assist homeowners fund repairs and improvements to their properties. These mortgages are usually targeted at older homeowners who have accumulated equity in their properties over the years.

5.2 This section sets out the procedures that must be followed by LAs/HAs when offering equity mortgages. The majority of these mortgages do not involve regular repayments over the mortgage term as the loan will be repaid on the eventual disposal of the property. As a result of this repayment approach and the fact that many of these mortgage products are aimed at the more mature homeowner, additional consumer protection requirements have been included in this Guidance. These are aimed at ensuring that the customer is aware of how the mortgage will be repaid in the future and the potential impact on eligibility for both welfare benefits and tax concessions.

What is an Equity Mortgage?

5.3 Equity mortgages are defined as follows:

A mortgage contract under which:

(a) eligibility for the mortgage is restricted to older customers above a specific age; **and**

(b) the HA/LA will not seek full repayment of the loan (including interest, if any, outstanding) until one or more of the following events occurs:

(i) the death of the customer;

(ii) the customer leaves the mortgaged property to live elsewhere and there is no reasonable prospect of them returning (for example, moving to residential care);

(iii) the customer acquires another property and uses this new property as his main residence;

(iv) the customer sells the mortgaged property;

(v) the LA/HA exercises its legal right to take possession of the mortgage property under the terms of the mortgage contract; **and**

(c) while the customer continues to live in the mortgaged property as his main residence:

(i) no repayments of capital or interest are due or will become due;

(ii) although interest payments may become due, no full or partial repayment of the capital is due or will become due;

(iii) although interest payments and partial repayment of the capital may become due, no full payment of the capital is due or will become due.

5.4 Where a mortgage product complies with this definition, the following procedures must be adopted. **There may be circumstances where HAs/LAs also offer equity mortgages to other customers that do not fall exactly within this definition. In these cases, it would be at the HA's/LA's discretion whether the additional consumer protection requirements listed below are also adopted.**

Customer Information Document (CID)

5.5 When first making contact with the customer, the HA or LA must provide the customer with information on a number of key issues, including:

- who will be providing the mortgage;
- any fees that will be charged and refund policy;
- how to make a complaint.

5.6 This information can either be provided on a separate Customer Information Document (CID) or incorporated within literature produced by the HA/LA on their mortgage products. Where the information is included within alternative literature, the same terminology must be adopted for each of the categories of prescribed information including headings and text (apart from the overall heading 'Customer Information Document'). The information must be provided on making first contact with the customer. The aim of the CID is to provide the customer with early confirmation that the mortgage will be granted by the LA/HA and not by any other lender, any fees that might be incurred and what recourse would be available if the customer was unhappy with the mortgage application procedures adopted.

5.7 Guidance on the completion of the CID is set out in paragraphs 3.1 to 3.10 of Section 3 and a sample CID can be found at the Annex to Section 3.

Pre-Mortgage Application: factors to consider

5.8 Before making an application, the HA/LA must take reasonable steps to ensure that the equity mortgage would be suitable for the customer. Releasing a proportion of the equity in a property can have a knock-on affect on other aspects of a customer's circumstances, for example, eligibility for both state benefits and tax concessions, especially in the case of older homeowners.

Factors to take into account in determining suitability

5.9 An equity mortgage would be suitable if, taking into account the information provided by the customer, the HA/LA has reasonable grounds to conclude that:

(a) the benefits to the customer outweigh any adverse effect on:

- the customer's entitlement (if any) to means-tested benefits;
- the customer's tax position (e.g., loss of Age Allowance).

5.10 If an HA/LA does not have sufficient knowledge of means-tested benefits and tax allowances to reach a decision, the customer should be referred to, for example, the Pension Service, HM Revenue and Customs or the Citizen's Advice Bureau. If a customer fails to seek further advice on benefits or tax entitlement or rejects suggestions as to other methods of fund raising, the HA/LA can still allow an application to be made where there is an equity mortgage that is appropriate to the needs and circumstances of the customer.

(b) alternative methods of raising the required funds are less suitable

5.11 The HA/LA must consider:

- whether the customer's requirements meet the eligibility criteria for the equity mortgage, for example, the amount the customer wants to borrow;
- the customer's wishes for his estate, for example, whether the customer wants to be certain that he can leave money in his estate to his heirs;
- the customer's health and life expectancy [this includes general information available];
- the customer's future needs and plans, for example, whether the customer is likely to want to move house.

(c) where the mortgage requires payments to be made to the HA/LA, the customer can afford these

5.12 The HA/LA must explain that the assessment of whether the customer can afford the mortgage is based on current interest rates (which might rise in the future) and the customer's current circumstances (which might change in the future).

5.13 In assessing affordability, the HA/LA must have due regard to:

- information the customer has provided about his income and expenditure and any other resources available;
- any likely change to the customer's income, expenditure or resources;
- whether the mortgage is appropriate to the needs, objectives and circumstances of the customer;
- the equity mortgage is the most suitable of those the HA/LA offers.

5.14 A mortgage application should not be made if there is no equity mortgage which is appropriate to the needs and circumstances of the customer.

5.15 Where there are several equity mortgage products that would be suitable for the customer, the HA/LA should give the customer details of all these products including the one that is least expensive taking into account the customer's needs and requirements, for example, the overall cost, a capped rate of interest or a 'no negative equity guarantee'.

Record keeping

5.16 A record must be kept of:

- the customer's information (including their needs and circumstances) obtained as part of the application process;
- why the HA or LA has concluded that a particular equity mortgage is suitable for a customer.

5.17 This record must be kept for one year from the date on which the mortgage is redeemed.

SECTION 6

Equity Mortgages: Information at Mortgage Offer Stage

Summary

If the HA/LA makes an offer for an equity mortgage product, the customer must receive an Equity Mortgage Offer Document (EMOD). The EMOD includes key information about the mortgage, to enable the customer to check the features and price of the mortgage before deciding whether to accept the offer. The HA/LA must emphasis to the customer the importance of both reading and understanding the EMOD.

Equity Mortgage Offer Document

6.1 Following the mortgage application process, if the HA/LA intends to offer an equity mortgage to the customer, it must provide the customer with an Equity Mortgage Offer Document (EMOD). The aim of the EMOD is to provide the customer with important information about the mortgage, how much it will cost, what fees will be charged and other key features so that the customer can make an informed decision whether to accept the offer. A sample format for the EMOD is included in the Annex to this section.

6.2 The information in the EMOD forms a baseline standard for all HAs and LAs. Each HA/LA can reproduce their own EMOD adopting their own house style and brand, however it must include all the prescribed information in a clear format. Additional information can be included in the EMOD as long as this does not detract from the prescribed information. The customer must receive the EMOD in a durable medium so the customer can read and refer back to the Document at a later stage. The HA/LA must emphasise to the customer the importance of both reading and understanding the EMOD. A new EMOD must be issued if a further advance is made to the customer, the terms of the mortgage are varied or the parties to the mortgage change in the future.

Prescribed information for inclusion in the EMOD

HEADING(S)

6.3 The EMOD must include the heading 'Equity Mortgage Offer Document' and can include the HA/LA logo and name of the mortgage product. All the other headings listed below in connection with the prescribed information must also be included. In addition, the first section of the EMOD must list:

- the customer's name;
- the date the EMOD was produced;
- details of how long the mortgage offer is valid for.

6.4 This will inform the customer of how long they have in which to decide whether or not to accept the mortgage offer.

The text should be:

"Customer Information for: [insert customer's name]

Date Produced: [insert date]

[insert details of how long the offer is valid for]"

DO YOU HAVE TO ACCEPT THIS MORTGAGE OFFER?

6.5 Customers may not be aware of how the equity mortgage offer affects them and whether they are obliged to accept it. This information confirms that the customer is not bound by the offer until certain events have occurred, for example, the customer has also signed the legal charge and the mortgage funds have been paid to the customer. HAs/LAs may want to list alternative events/signing of documents, after which the customer will be bound by the mortgage offer.

The text should be:

"You are not bound by the terms of this Equity Mortgage Offer Document until [insert relevant circumstances including the names of any documents that must be signed, for example, 'You have signed the legal charge and the funds have been released for your mortgage'."

WHAT ASSISTANCE HAVE WE GIVEN YOU?

6.6 The customer must receive confirmation of what assistance the HA/LA has provided as part of the mortgage application process (see paragraph 3.6).

"We have told you about the equity release mortgage products we have available based on your needs and circumstances. You will need to make your own choice on whether to proceed."

WHAT INFORMATION YOU HAVE GIVEN US ABOUT YOUR NEEDS

6.7 It is useful for the EMOD to confirm some of the information that the customer has provided to the HA/LA. This reinforces the fact that the EMOD has been provided on this basis and taking into account these circumstances. This section can include details such as:

- the amount of the mortgage required by the customer;
- the value of the property on which the mortgage will be secured.

ABOUT THIS MORTGAGE

6.8 The EMOD must include a brief description of the mortgage for the customer. This should include (where applicable):

- a general description of the mortgage product;
- whether there will be regular repayments;
- a description of the interest rate type,(for example, whether it is a standard variable rate, fixed rate, discounted rate, capped rate);
- the rate of interest that applies to the mortgage;
- how long the rate of interest will apply if it is only for a fixed period;
- notice that if the mortgage is interest-only, the full amount of the original debt will remain outstanding;
- the fact that the mortgage will be repaid on the disposal of the property;
- a very brief description of any restrictions that apply to the availability of the mortgage, for example, that it is only available to certain customers;
- the following statement on the term of the mortgage:

The text should be:

"The term of this equity mortgage is not fixed and will continue to run if you are still living in your home."

6.9 As equity release mortgages are based on repayment being made on the disposal of the mortgaged property either on the customer's death or on moving, a specific term of the mortgage is not required in the EMOD.

6.10 The following statements provide examples of how different products could be described:

Rolled-up interest mortgage

"You do not have to make any repayments during the life of this equity mortgage. The loan, all of the interest and charges due will be paid from the sale of your home. This will happen on your death [or the death of the last borrower] or if you move home (either into another property or into sheltered accommodation or residential care). Any money left over would be paid to you or your beneficiaries."

[If only part of the interest is rolled-up, the statement should specify the amount or proportion of the loan which the interest will be rolled-up.]

For an interest-only mortgage

"This is an interest-only equity mortgage, which means that you have to make [insert frequency of payments] payments to [insert name of HA/LA] until the equity release mortgage is repaid. The amount you owe will stay the same over the life of the mortgage unless fees or charges have to be added. The mortgage will be repaid from the sale of your home on your death [or the death of the last borrower] or if you move home (either into another property or into sheltered accommodation or residential care). Any money left over would be paid to you or your beneficiaries."

Where the mortgage is a **shared appreciation mortgage**, the following information must be included:

The text should be:

"This mortgage involves [insert name of HA/LA] taking a percentage share in any increase in the value of your property [insert details of when the share will become payable, for example, 'when this mortgage comes to an end or is terminated early']. The amount [insert name of the HA/LA] will take depends on any increase in the value of your property.' [Include if relevant: 'If your property falls in value between now and the end of this mortgage you will be required to pay [add details of what the customer will be required to pay]."

6.11 In addition, the EMOD must include a brief explanation of how the amount of the share payable by the customer is calculated and how any increase in the property's value will be dealt with. For example, if the property's value increases by 7% over the life of the loan, the EMOD must explain what proportion of that 7% increase will be payable to the HA/LA and what proportion (if any) to the customer. In some cases, the whole amount of any increase in value may be payable to the HA/LA. In other cases, the amount payable to the HA/LA may be capped (for example, at 5%). If the amount of the increase in value which may be payable to the HA/LA cannot go above a certain level (in this example, 5%), the EOD must explain this and include a cash example of the share which may be payable to the HA/LA. If the amount of increase in value payable to the HA/LA is not capped at a certain level, the EMOD should show three cash examples of how much may be payable to the HA/LA. These three examples should assume a 1%, 5% and 10% increase in value of the property.

BENEFITS

6.12 The EMOD must include a description of the monetary amount the customer will receive as a lump sum. In some cases, this amount may be paid direct to a contractor to fund home improvement works:

The text should be:

"This equity mortgage will provide a lump sum of £[x]"

TOTAL COST OF THIS MORTGAGE

6.13 The customer will need to have an indication of the overall cost of the mortgage, including any interest and fees payable, together with an APR for comparison.

The text should be:

"The total amount you would pay back including the amount borrowed is £[insert amount payable]"; and

"The overall cost for comparison is [insert details]% APR".

6.14 For shared appreciation mortgages, it is not possible to predict the total amount to be repaid at Mortgage Offer stage. Therefore, the total amount should include the loan amount and any fees charged, together with the following text:

"The APR and the total amount you must pay do not take account of the share that [insert name of HA/LA] takes in any increase in the value of your property."

WHAT REGULAR REPAYMENTS WILL YOU NEED TO MAKE?

6.15 The customer will need to know what repayments (if any) need to be made and at what intervals, for example, if the repayments are monthly and how much they will be.

(a) Mortgage amount
The loan amount must be included in this section, inclusive of any fees and charges.

(b) Regular Repayments
Where the mortgage has a regular repayment plan, information must be provided on the amount of the repayments and when they are due, for example, monthly.

(c) No regular repayment plan
Where the mortgage product does not have a regular repayment plan.

The text should be:

"You [do not need to/cannot] make regular repayments on your mortgage."

(d) Deferred interest

For deferred interest mortgages, the MOD must set out for each year or part year that the interest rate charged on the mortgage is deferred, the following information:

- Interest deferred – the percentage of interest deferred based on the rate charged when the EMOD was issued.
- Amount of deferred interest added to the mortgage – setting out the amount in cash terms as a result of deferring the payment of interest.
- The amount outstanding on the mortgage before any deferred interest is added.
- The amount outstanding on the mortgage with the deferred interest added.
- Confirmation that where the interest rate is variable, the amounts listed could be considerably different.
- Confirmation where no regular repayments are necessary.

The text should be:

'You [do not need to/cannot] make regular payments on your mortgage.'

WHAT FEES WILL YOU HAVE TO PAY?

6.16 The customer must be advised of any fees payable to the HA/LA (together with any other fees payable to a third party) in connection with the mortgage application, for example, legal or valuation fees. The information should include:

- a description of the fee;
- the amount payable;
- when the fee is payable;
- whether or not the fee is refundable.

6.17 If no fees are payable, then a statement of this fact should be included in the MOD. If insurance premiums are payable as a condition of the mortgage, details can be included in this section.

WHAT ARE THE RISKS OF TAKING OUT THIS MORTGAGE?

6.18 The customer must be made aware of the potential risks associated with taking out the equity release mortgage. The information must set out (where applicable):

- whether the HA/LA is able to take possession of the property. If the mortgage has a no possession guarantee, this should be stated in the EMOD;
- how the HA/LA will treat any negative equity arising during the life of the mortgage;
- a warning that taking out the mortgage could affect the customer's tax and welfare benefits position and the need to seek further information from the HM Revenue and Customs, Benefits Agency or Citizen's Advice Bureau;
- the following statement, which should be prominently displayed in the EMOD.

The text should be:

"Check that this mortgage will meet your needs if you want your family or others to inherit your home. If you are in doubt, seek independent legal and financial advice."

Where the mortgage is a **shared appreciation mortgage:**

The text should be:

"You will need to pay this share in the value of your home to [insert name of HA/LA] [insert when the share must be repaid, for example, when your mortgage is repaid"] Think carefully about how this will affect the amount left over for you or your estate."

WHAT HAPPENS IF YOU NO LONGER WANT THIS MORTGAGE?

6.19 The customer will need to know what will happen if they take out the mortgage and then no longer want it. The EMOD must list any early repayment charges that might apply if the customer repays the mortgage early. In addition, details of whether the mortgage is portable on moving house should also be included.

6.20 If there are no early repayment charges and the mortgage cannot be transferred to another property, the MOD should include a clear statement of this fact and confirm that the mortgage will need to be repaid in full.

CONTACT DETAILS

6.21 The EMOD must include the name, address and telephone number for a contact point at the HA/LA who can deal with any enquiries regarding the information in the EMOD. Additional contact details can be included, for example, an email address at the discretion of the HA/LA.

TARIFF OF CHARGES

6.22 When an HA/LA issues an EMOD, it must also provide a tariff of any charges that could be incurred under the mortgage contract. The tariff can either be included as an integral part of the mortgage offer or provided separately along with the EMOD. If no further charges will be payable, a tariff does not need to be provided.

RECORD KEEPING

6.23 The HA/LA must make an adequate record of each EMOD issued to a customer. This record must be retained for one year from the date on which the mortgage is redeemed.

ANNEX TO SECTION 6

Equity Mortgage Offer Document

See section 6 for guidance on the information to be included in the Equity Mortgage Offer Document

Customer Information for: [insert customer's name]

Date Produced: [insert date]

(Insert details of how long the offer is valid for)

(see paragraphs 6.3 & 6.4)

1. Do you have to accept this mortgage offer?

You are not bound by the terms of this Equity Mortgage Offer Document until [insert relevant circumstances including the names of any documents that must be signed, for example 'You have signed the legal charge and the funds are released for your mortgage.']

(see paragraph 6.5)

2. What assistance have we given you?

We have told you about the equity mortgage products we have available based on your needs and circumstances. You will need to make your own choice on whether to proceed.

(see paragraph 6.6)

3. What information you have given us about your needs

Example:

- amount of the loan required by the customer
- value of the property on which the mortgage will be secured

(see paragraph 6.7)

4. About this Mortgage

Examples:
- general description of the mortgage
- whether there will be regular repayments
- if loan will be repayable on disposal of the property

(see paragraphs 6.8 to 6.11)

5. Benefits

The mortgage will provide a lump sum of £ (x)

(see paragraph 6.12)

6. Total cost of this Mortgage

The total amount you must pay back including the amount borrowed is: £ [insert details]

The overall cost for comparison is: % APR [insert details]

(see paragraphs 6.13 & 6.14)

7. What regular repayments will you need to make?

Example:
- Total loan amount: £ (insert amount)
- Monthly repayments: £ (insert amount)

(see paragraph 6.15)

8. What fees will you have to pay?

Example:
- Include description of each fee, the amount, when it will be payable and if refundable.

(see paragraphs 6.16 & 6.17)

9. What are the risks of taking out this mortgage?

Examples:

- Does the mortgage have a no-possession guarantee?
- Include warning: Check that this mortgage will meet your needs if you want your family or others to inherit your home. If you are in doubt, seek independent legal and financial advice.

(see paragraph 6.18)

10. What happens if you no longer want this mortgage?

Example:

- No early repayment charges will be made if the mortgage is repaid early, before the end of the mortgage term.
- This mortgage is not portable on moving property.
- The full amount of the mortgage will need to be repaid.

(see paragraphs 6.19 and 6.20)

11. Contact Details

Example: if you have any queries in connection with this Equity Mortgage Offer Document please contact:

Name:

Address:

Tel. number:

(see paragraph 6.21)

SECTION 7

Distance Mortgage Applications: Additional Information Requirements

Summary

Where a HA/LA provides a mortgage application service which is undertaken without any face-to-face contact with the customer at any stage, for example, exclusively via the internet, telephone or fax, additional information must be given to the customer. These disclosure provisions are set out in the Distance Marketing Directive and incorporated within UK legislation via the Financial Services (Distance Marketing) Regulations 2004.

What are distance sales?

7.1 The disclosure provisions for distance sales were initially intended to provide additional consumer protection where a customer is applying for financial services in another Member State. However, the provisions also apply to all non face-to-face transactions (even within the same Member State), where the application process is undertaken in an 'organised' distance way, for example, solely over the telephone or internet.

Examples

7.2 Where a customer meets the HA/LA's representative face-to-face to discuss a mortgage product and make an application (be it in the customer's home or the LA's/HA's premises), the mortgage sale would not be deemed to have been undertaken at a 'distance' and so would not be caught by the Regulations.

7.3 If the same customer receives information through the post, press, television, radio or internet advertising (or receives none at all) and then deals with the HA/LA solely by post, internet or fax, it would be caught by the Regulations as the means of selling was via a distance communication.

7.4 The main test is that where the LA/HA has provided the customer with face-to-face information about the mortgage product or service, the additional information requirements for a distance sale would not apply.

Application to local authorities and housing associations

7.5 In practice, it is envisaged that many HAs and LAs will adopt procedures that involve meeting the customer (and also visiting their property) as part of the mortgage application process to fund home improvement works. However, as this sector of the mortgage market becomes more developed, it is possible that some HAs/LAs could consider adopting a more internet or telephone based approach. Therefore the requirements under the Regulations have been set out in this section.

Additional disclosure requirements

7.6 The Regulations require that the additional information be provided to the customer either on paper or via another durable medium which is available and accessible to the customer. The information should be provided:

- in good time prior to the customer being bound by the, for example, distance mortgage (in practice, this would be on completion when the mortgage funds had been released); or

- immediately after the completion of the mortgage, where the contract has been concluded at the customer's request using a means of distance communication which does not enable provision of all the necessary information before the mortgage funds are released.

7.7 Some of the information required under the Regulations is already included in the Customer Information Document (CID) (see Section 3). Therefore, where possible, there is merit in providing both the CID and any additional information when first making contact with the customer in connection with a mortgage application, where it is intended that the application will be conducted solely via a distance communication. The additional information which must be included is as follows:

7.8 All the contractual terms and conditions on which the mortgage service will be provided including, in particular, the following information:

(1) where the LA/HA has a representative established in the consumer's EEA State, the identity of that representative and the address where they can be contacted (This is unlikely to apply to an HA/LA as they invariably do not have representatives in other EEA States or undertake cross-border mortgage transactions);

(2) where the customer is dealing with a professional other than the HA/LA (as part of the application), the identity of the professional, the capacity in which he is acting with respect to the consumer and the address where they can be contacted;

(3) in relation to the mortgage contract, any limitations on how long the information provided is valid for;

(4) with regard to the cost of the service, notice of the possibility that other taxes or costs may exist that are not paid via the HA/LA or imposed by it and any specific additional cost to the customer (if any) for using a means of distant communication;

(5) the arrangements for payment and performance of the mortgage;

(6) the existence or absence of a right to cancel the mortgage. Under Regulation 10(d), a customer does not have the right to cancel the mortgage where the mortgage is a legal mortgage on land. This will exclude from the right to cancel, first charge secured mortgages covered by this Guidance;

(7) information on any rights the parties may have to terminate the mortgage contract early or unilaterally by virtue of the terms of the mortgage contract, including any penalties imposed under the mortgage in such cases;

(8) the EEA State or states whose laws are taken by the HA/LA as a basis for the establishment of relations with the customer prior to the completion of the mortgage;

(9) any contractual clause on the law applicable to the mortgage contract or on competent court or both;

(10) the language in which the mortgage contract and conditions are supplied and in which the HA/LA will communicate during the mortgage term.

Exemptions to the additional disclosure requirements

7.9 Under the Regulations, there are a number of exemptions from the requirements to provide the additional information in distance mortgage transactions.

(a) Exemption: Telephone Sales

7.10 This exemption applies where the mortgage application process is being undertaken via the telephone and the customer wants to enter into a mortgage contract with the HA/LA. If the customer gives his explicit consent to receiving only limited disclosure, the LA/HA must, prior to concluding the mortgage contract over the telephone provide the customer with the following information:

(1) the name of the HA/LA and the commercial purpose of the call (ie application for a home improvement mortgage);

(2) the scope of the service offered by the HA/LA, namely that it will offer its own mortgages for home improvement works;

(3) what assistance the HA/LA will provide the customer in considering the mortgage products available;

(4) that the information in (i) to (iii) above will be confirmed in writing;

(5) the name of the person in contact with the customer and his link to the LA/HA;

(6) the total price to be paid by the customer to the HA/LA as part of the application including all fees, charges, taxes and expenses. Where an exact price cannot be provided, the basis for the calculation of the price so that the customer can verify it;

(7) notice of the possibility that other taxes or costs may exist that are not paid via the HA/LA or imposed by it;

(8) whether or not there is a right of cancellation (as set out in paragraph 7.8 (6) above);

(9) that other information is available on request and the nature of that information.

7.11 Where this exemption applies, the LA/HA must send the customer without delay and, at the latest immediately after the mortgage has been completed, the information set out in paragraphs 7.7 (CID) and 7.8 above in a durable medium.

(b) Exemption: other means of distance communication

7.12 This exemption applies if the mortgage contract is concluded at the customer's request using a means of distance communication (but not the telephone) which does not enable provision of the information set out in paragraphs 7.7 (CID) and 7.8 above before the mortgage funds are released. In that case, the HA/LA must provide the customer with the information in a durable medium immediately after the funds have been released.

SECTION 8

Information during the Term of the Mortgage and Charges

Summary

Customers must receive sufficient information during the term of the mortgage to allow them to check any payments and charges that have been made and how much they continue to owe on the loan.

Information at the start of a mortgage

EQUITY MORTGAGES

8.1 Where an equity mortgage provides the customer with a lump sum and interest is then rolled-up during the life of the mortgage, the customer must be provided with the following information before the customer makes the **first payment**, or if no payments are required from the customer, within 10 days of completion of the mortgage:

- if no payments are required from the customer, confirmation that this is the case and details of how the mortgage will be repaid (for example, from the proceeds of the sale of the property).

8.2 If payments are required:

- the amount of the first payment required;
- the amount of the subsequent repayments;
- the method by which the payments will be collected, the frequency and the date of collection of the first and subsequent payments;
- what to do if the customer has difficulty in meeting the repayments, the benefits of making early contact with the HA/LA (providing an address and telephone number of a contact point) and referring the customer to any arrears charges in the tariff of charges.

ALL OTHER MORTGAGE PRODUCTS

8.3 If a mortgage requires regular repayments to be made, the following information must be provided to the customer before the customer makes the first repayment:

- the amount of the first payment required;
- the amount of subsequent payments, if different from the first payment;
- the method by which payment will be collected (for example, by direct debit) and the date of collection of the first and subsequent payment;
- confirmation of whether the mortgage is a repayment mortgage or interest-only;
- what to do if the customer has difficulty in meeting the repayments, the benefit of making early contact with the HA/LA (providing an address and telephone number of a contact point within the HA/LA) and referring the customer to any arrears charges set out in the tariff of charges.

FORMAT FOR THE INFORMATION

8.4 There is no prescribed format for this information and an HA/LA may choose to provide it in a letter to the customer once the mortgage offer has been accepted. The only requirements are that the information is provided in a durable medium and in one single document. This information allows the customer to check that the mortgage has been set up in accordance with the information in the Mortgage Offer Document (MOD) and notifies the customer of when the first repayment should be made.

8.5 Apart from the situation set out in paragraph 8.1 above, if the mortgage does **not** require regular repayments, this information does not have to be provided at the start of the mortgage contract.

RECORD KEEPING

8.6 A copy of the information given to customers at the beginning of a loan should be kept for a year from the date on which the mortgage is redeemed.

ANNUAL STATEMENTS

8.7 The customer must receive an annual statement of their mortgage, so they are fully aware of the financial position. The one exception to this requirement for an annual statement is where there are no repayments due on the mortgage during the mortgage term and no interest is charged. In these cases, a statement must be sent once every three years.

(a) Equity Mortgages

8.8 For equity mortgages, the statement must include the following information, where applicable:

- information on the type of mortgage including a statement of how the loan will be repaid, for example, from the proceeds of sale of the property;
- the date and amount of any payments made by the customer;
- the rates of interest applied during the period;
- the amount of interest charged during the period;
- the amount of any charges or fees levied;
- the amount owed under the loan;
- the date on which any early repayment charges cease to apply (if any);
- the cost of redeeming the mortgage, including a statement explaining the position if there are amounts that cannot be calculated at that stage, for example, where the mortgage has a shared appreciation element that cannot be accurately calculated without undertaking a formal valuation;
- where it is possible for arrears to occur, a reminder that the customer should make contact with the HA/LA if they are unable to meet the regular repayments.

(b) All other mortgage products

8.9 The annual statement must include the following information, where applicable:

- information on the type of mortgage (where the mortgage is an interest-only mortgage, a reminder that the customer should have in place arrangements to repay the capital);
- details of the payments received since the last statement (or where the statement is the first statement, since the customer entered into the loan);
- the date and amount of each payment made;
- the rates of interest applied during the period;
- the amount of interest charged during the period;
- the amount of any other charges or fees levied;
- the amount owed under the mortgage;
- the remaining term of the mortgage, or confirmation that this is open-ended;
- the date on which any early repayment charges cease to apply;

- the cost of redeeming the mortgage;
- a reminder that the customer should contact the HA/LA if they are unable to make the regular repayments under the mortgage.

CHANGES TO THE TERMS AND CONDITIONS OF THE MORTGAGE

8.10 An HA/LA must give the customer reasonable notice, in advance of:

- any changes to the customer's payments resulting from interest rate changes;
- any changes to the terms and conditions of the mortgage, where the changes are allowed without the customer's prior consent.

CHARGES

8.11 Any charges levied by an HA/LA in connection with either a mortgage application or the on-going administration of a mortgage must not be unfair or excessive. In determining whether a charge is excessive, consideration should be given to:

- the amount of the charges compared to charges for similar products or services on the market;
- the extent of the disclosure of the charges to the customer.

TARIFF OF CHARGES

8.12 If the tariff of charges (if any) applied by the HA/LA has changed since the last annual statement, a new tariff should be included with the new annual statement.

SECTION 9

Arrears and Possessions

Summary

Where a customer is experiencing financial difficulties and is either unable to meet the mortgage repayments or has a shortfall debt, the customer must be treated fairly. Many mortgage products offered by an HA/LA include a no-possession guarantee. However, an HA/LA would still be required to comply, where applicable, with the fair treatment, information and shortfall debt requirements in this section.

Fair treatment of customers

9.1 An HA/LA must treat 'fairly' any customer:

- in arrears with their mortgage repayments;
- with a mortgage shortfall debt.

9.2 To ensure that the principle of 'fair treatment' is being adopted, each HA/LA must:

- use reasonable efforts to reach an agreement with the customer over the method of repaying any arrears or mortgage shortfall debt (this could include a change to both the existing repayment date and how the mortgage is repaid);
- liaise (if the customer requests this) with a third party advice agency regarding the debt, for example, the National Association of Citizen's Advice Bureau;
- adopt a reasonable period over which any arrears or mortgage shortfall should be repaid, taking into account the customer's income and the need to achieve a practical and feasible payment plan;
- not put pressure on a customer through excessive telephone calls or correspondence, or by contact at an unreasonable hour (usually between 9pm and 8am);
- only take possession of the property when all other reasonable attempts to resolve the position have failed.

Provision of information

9.3 If a customer falls into arrears, an HA/LA must, within the next 15 business days, provide the customer with the following information in a durable medium:

- a list of the due payments either missed or only paid in part;
- the total sum of any payment shortfall;
- any charges incurred as a result of the payment shortfall.

Action prior to taking possession

9.4 Before taking any action for possession of the property, an HA/LA must:

- provide a written update of the information included in paragraph 9.3 above;
- ensure that the customer is informed of the need to contact the local authority to establish whether the customer is eligible for local authority housing after his property is repossessed;
- clearly set out what action will be taken to obtain possession.

Repossessions: Sale of the property

9.5 If a property is taken into possession, the HA/LA must ensure that action is taken to:

- put the property up for sale as soon as possible;
- obtain the best price that might reasonably be paid taking into account property market conditions and the potentially increasing debt owed by the customer.

Shortfall Debt

9.6 Where the proceeds of sale are less than the amount of the customer's debt, then as soon as possible after the sale the customer must be informed (in a durable medium) of:

- the amount of the mortgage shortfall debt;
- where a decision is made to recover the mortgage shortfall debt, the HA/LA must ensure that the customer is notified of this intention. This notification must take place within six years.

Surplus funds following possession

9.7 Where the proceeds of sale are more than the amount of the customer's debt, reasonable steps should be taken as soon as possible after the sale to inform the customer (in a durable medium) of the surplus and (subject to the rights of any subsequent lenders) pay it to the customer.

Record keeping

9.8 An HA/LA must make and retain an adequate record of its dealings with a customer whose account is in arrears or who has a shortfall debt, which will enable the HA/LA to show its compliance with this section and the requirement to treat customers in default 'fairly'. The record must be kept for a year from the date on which the mortgage is redeemed.

SECTION 10

Advertising Standards

Summary

Advertisements for mortgages should:

- use plain and intelligible language;
- be easily legible (or, in the case of any information given orally, clearly audible);
- comply, where necessary, with the Consumer Credit (Advertisement) Regulations 2004.

Advertising requirements

10.1 When HAs and LAs advertise mortgages they will need to have regard, where necessary, to the Consumer Credit (Advertisement) Regulations 2004 (SI 2004 1484), which came into force on 31 October 2004.

10.2 On 28 September 2005, the Office of Fair Trading published detailed guidance on the operation of the 2004 Regulations in two publications:

- Credit Advertising booklet;
- Frequently Asked Questions on the Advertisement Regulations.

10.3 This guidance sets out which advertisements are covered by the regulations, those which are excluded and the content of advertisements. HAs and LAs are recommended to refer to this guidance which can be found at: www.oft.gov.uk/Business/Legal/CCA/advertising.htm

Record keeping

10.4 The HA/LA must make an adequate record of each advertisement, which must be retained for five years from the date on which the advertisement was last communicated.

SECTION 11

Annual Percentage Rate (APR)

Summary

The Annual Percentage Rate (APR) is one measure customers can use to compare the credit charges between mortgage products.

HAs and LAs will need to, where necessary:

- include an APR in advertisements for mortgages;
- include an APR in the Mortgage Offer Document;
- comply with the Consumer Credit (Total Charge for Credit) Regulations 1980 (as amended).

Total Charge for Credit Regulations

11.1 This section provides an overview of the requirements for the calculation of the APR. HAs/LAs should also refer to the Consumer Credit (Total Charge for Credit) Regulations 1980 (as amended). These Regulations, together with a useful guide on 'Credit Charges and the APR' (that includes examples of how to calculate the APR) can be found on the Office of Fair Trading's website at www.oft.gov.uk.

Calculating the APR

11.2 The APR must be calculated so that the annual percentage rate of charge is the correct value of i in the mathematical equation below, expressed as a percentage:

$$\sum_{K=1}^{K=m} \frac{A_K}{(1+i)^{t_K}} = \sum_{K'=1}^{K'+m'} \frac{A'_{K'}}{(1+i)^{t_{K'}}}$$

Meaning of letters and symbols

K is the number identifying a particular advance of credit

K' is the number identifying a particular instalment

Ak is the amount of advance K

A'k' is the amount of instalment K'

∑ represents the sum of all the terms indicated

m is the number of advances of credit

m' is the total number of instalments

tk is the interval expressed in years between the relevant date and the date of advance K

tk' is the interval, expressed in years, between the relevant date and the date of instalment *K'*

i is the APR, expressed as a decimal

Notes:

1. The value of *i* in the equation is expressed as a decimal rather than a percentage. Therefore, when the correct value of *i* in the equation has been found, it must be multiplied by 100 to obtain the result as a percentage.

2. The 'relevant date' is generally the date on which the agreement is made.

3. An 'instalment' is defined as any payment made by or on behalf of the customer which is:

   - a repayment of all or part of the credit under the agreement;

   - a repayment of all or part of the total charge for credit;

   - a combination of the two.

Accuracy and time periods

11.3 The APR is the correct mathematical result given by the statutory equation, expressed as a percentage and rounded to one decimal place. The Regulations set down the meaning of 'rounded' in detail:

- if the figure at the second decimal place is 5 or greater, the figure at the first decimal place is to be increased by one and the decimal places following the first ignored;

- if the figure at the second decimal place is less than 5, the decimal places following the first are ignored.

11.4 The method of calculation used must be accurate to at least two decimal places in the percentage result to ensure that the APR is correct.

11.5 As the APR is an annual rate, the times of advances and instalments must be expressed in years. However, agreements rarely have annual repayments and the Regulations prescribe rules for converting other periods to years and parts of a year:

- if a period is an exact number of calendar months (regardless of the variation in the number of days in a month) the period should be counted in months, taking each month to be equal to one-twelfth of a year;
- if the period is an exact number of weeks, the period should be counted in weeks taking each week to be a fifty-second part of a year;
- in any other case, the period should be counted in years and days and a day is taken to be either one 365th of a year or, if the day is in a leap year, one 366th of a year.

APR calculation: assumptions as to the credit provided in land-related agreements

11.6 The APR **must** be calculated on the basis of the following assumptions –

(A) EVENTS WHICH ARE NOT CERTAIN TO OCCUR

11.7 In cases where it is possible that the charges will vary as a result of an event which is certain to occur and where the date of the event can be identified when the agreement is made, it must be assumed that the variation takes place when the event occurs. For example, if a mortgage has a low start rate for a set period, it must be assumed that there will be a variation to the charges at the end of the low-start period.

(B) TIMING OF THE CREDIT ADVANCE

11.8 It must be assumed that the credit is advanced at the earliest time provided for under the transaction. If the terms provide for the credit to be advanced at, or no later than, a specified date, it must be assumed that it is provided on that date. If the credit is to be provided before the relevant date, it must be assumed that it is provided on the relevant date.

(C) TIMES OF REPAYMENT OF THE CREDIT AND CHARGES

11.9 Any right of the lender to demand early repayment of the credit and charges should be ignored. If the times of the payment of charges are unknown at the time the agreement is made, see paragraphs 11.17-11.18 below. Where that assumption does not apply, or does not provide sufficient information, it must be assumed that the repayments of credit and payments of charges are made at the earliest time required by the terms of the transaction. If the transaction requires a repayment to be made no later than a specified date, that date should be used as the time of payment. If repayments and charges are to be paid before the relevant date, it will be assumed that they are paid on the relevant date.

(D) AMOUNT OF INSTALMENTS

11.10 It must be assumed that the amount of the instalments are the smallest required under the agreement at the time they are made.

(E) OTHER ASSUMPTIONS

- Any land tax the customer might be entitled to receive as a result of the transaction must be ignored. The TCC and the APR must be calculated on the assumption that the customer makes payments gross rather than net of any tax relief.

- It must be assumed that no assistance is given under the Home Purchase Assistance and Housing Corporation Guarantee Act 1978.

Assumptions that must be made where necessary

11.11 The following assumptions should only be applied if the information they provide cannot be found at the date the agreement is made:

(A) AMOUNT OF CREDIT

11.12 Where the amount of credit to be provided under the agreement cannot be ascertained at the time of the agreement, then the amount shall be taken to be £100. Separate rules apply where the agreement is for running account credit (for example, a credit card) where the amount will be assumed to be the amount of the credit limit.

(B) CREDIT PERIOD

11.13 If the period for which credit is to be provided cannot be found, it should be assumed that it is provided for one year beginning with the relevant date.

(C) INDEX LINKED CHARGES

11.14 Some agreements provide for rates of interest and other charges which vary according to a formula which uses an index or some other variable factor. If an agreement provides for the possibility of a change in the interest rate and it is necessary to assume that a variation will take place after the agreement is made, it must be assumed:

- in a case where the agreement provides a formula for calculating the 'varied rate' using a standard variable rate but the varied rate cannot be found when the agreement is made – because the standard rate or level at the time of variation will take place is not known, the varied rate must be calculated assuming that the standard rate or level in operation when the variation takes place is the same as the 'initial standard variable rate';

- in any other case where the varied rate cannot be found when the agreement is made, it must be assumed that the varied rate will be the same as the initial standard variable rate.

(D) CHANGES IN CHARGES

11.15 If it is known that, under the agreement the rate or amount of a charge will change at a specific time, the change must be taken into account. However, where the period for which all or part of the credit is to be provided cannot be found at the date the agreement is made and, under the transaction, the rate or amount of any charge included in the TCC will change within one year beginning on the relevant date, it must be assumed that the rate or amount in operation throughout the agreement will be the highest applicable during that year.

(E) TIME OF PROVISION OF CREDIT

11.16 Where the earliest date on which the credit is to be advanced under the agreement is not known at the date of making the agreement, it must be assumed that the credit is provided on that date.

(F) DATES OF PAYMENT OF CHARGES

11.17 If the time of payment of a single charge cannot be found at the time the agreement is made, it must be assumed that it is paid on the relevant date or, where it is reasonable to expect the customer will not pay it at that time, the earliest reasonable date.

11.18 Where more than one payment of a charge of the same description is to be made at times which cannot be ascertained at the date of the making of the agreement, the first must be assumed to be made on the relevant date (or the earliest reasonable date) and the last is assumed to be paid at the end of the credit period. Any other payments of the charge are assumed to be made at equal intervals between the first and last payments.

Total Charge for Credit (TCC)

11.19 The Regulations define the charges which make up the TCC by first including interest and any other charges payable under the transaction (see A below) and then excluding certain specified charges (see B below).

(A) CHARGES INCLUDED IN THE TCC

11.20 Apart from those items specifically excluded (see B below), the TCC includes any of the following charges which are payable by the customer or on behalf of the customer:

- the interest on the credit and any other charges payable under the agreement;
- any other charges payable under the transaction, for example, security charges, broker's fees, charges under a linked transaction;
- a premium under an insurance contract payable by the customer, where the making or maintenance of the insurance contract is required by the lender as a condition of making the agreement and for the sole purpose of ensuring the repayment of the credit in the event of the death, invalidity, illness or unemployment of the customer.

(B) CHARGES EXCLUDED FROM THE TCC

11.21 A charge which is payable under the transaction is **excluded** from the TCC if it falls into any of the following categories:

Default charges

- Any charges payable to the lender as a result of the customer being unable to carry out their obligations under the agreement, including charges that the lender has to pay to someone else if the customer (or another person on his behalf) defaults under the mortgage.

Charges paid by cash and credit customers

- Charges which would also be payable if the goods or services were bought for cash.

Incidental charges

- Charges which are for services and benefits unrelated to the credit agreement and also for other services or benefits which may be supplied to the customer if the customer:

  (i) has entered into the arrangements underwhich the charges are made before applying for credit; and

  (ii) the arrangements do not require the customer to enter into a credit agreement.

Care, maintenance and protection arrangements

- Charges under arrangements for the care, maintenance and protection of any land, buildings or goods. The exclusion arises if the charge is for services which are carried out only if the condition of the land, building, goods deteriorates to the extent that they cannot be enjoyed or used and the charge is made only if the work is actually carried out and the customer is free to choose who provides the service.

Bank Charges

- Charges for paying money into or out of a current account where the level of the charges varies with the use the customer makes of the account.

Guarantee Charges

- Any charges payable under a guarantee unless the guarantee is required by the lender as a condition of making the agreement and the only purpose of the agreement is to make sure that the credit and other charges in the TCC due under the agreement are paid in full or in part if the customer dies, falls ill or becomes invalided or unemployed.

Charges for the transfer of funds

- Charges for the transfer of funds and for keeping an account intended to receive payments towards the credit and payment of interest unless the customer has no reasonable freedom of choice in this matter and the charges are abnormally high.

Other insurance premiums

- Any insurance premium, except those listed above.

Directions issued by the Office of Fair Trading

11.22 Under Section 60 (3) of the Consumer Credit Act 1974, the Office of Fair Trading (the OFT) can either waive or vary a requirement to comply with regulations made under the 1974 Act if it appears impracticable for the applicant to do. Some HAs have already obtained a Direction from the OFT on this basis, as they have insufficient information on which to calculate the APR due to the way in which their mortgage products have been organised. For example under one scheme, the HA lends the customer 25% of the purchase price of a property and the customer agrees to repay, when the agreement comes to an end, 25% of the value of the property at that time. Since the duration of the loan and the final value of the property are unknown at the time the agreement is made, there is insufficient information to calculate the APR. Under this procedure, the OFT prescribes alternative information to be provided to the customer. Further details on this procedure can be obtained from the OFT:

Enforcement and Licensing Section
Consumer Regulation and Enforcement Division
020 7211 8000

The Regulatory Reform (Housing) (England and Wales) Order 2002 created a new framework for local housing authorities to provide financial and other assistance for home repair and improvement. This Mortgage Sales Guidance sets out the procedures that both Registered Social Landlords (commonly known as housing associations (HAs) and local authorities (LAs) must follow when providing mortgage finance under these new powers.

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