CeMAP 2

REVISION GUIDE

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CeMAP© 2

Revision Guide 2022/2023

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High House Publishing

The Revision Guide, as with all our supporting material, is complementary to the main textbook and will never replace the detail contained therein. It was never written to reproduce the same text - that would serve no purpose. It does contain, however, bulleted summaries of the syllabus. These bullets are lighter in substance but retain the major points.

It is, essentially, a Revision Guide.

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The Revision Guide's Contents

1 Mortgage Law, Policy, Practice & Markets

Personal Borrowers

- Majority of borrowers for mortgage loans and comprise of first-time buyers and subsequent buyers.
- Income multiples were often used where salaries and additional incomes are multiplied by set amounts to give a maximum loan. Often regular outgoings such as personal loan payment are deducted from salary before applying the multiple.
- Affordability where lenders ensure that the applicant's income and expenditure is examined before deciding how much they can borrow.
- Under the Mortgage Market Review, the regulator has imposed more rigorous requirements on checking affordability.
- Mortgages can be arranged in joint names, but payments are required from all borrowers – they are not split like property ownership. This is known as a joint and several liability.

Semi Corporate Lending

- To a business where there is a residential element, e.g. corner shop with flat above or the picture below which shows a garage with accommodation above.
- This is also known as commercial lending as the borrower is a commercial borrower.

Corporate Lending

- To a limited company or body with a separate legal identity.
- Higher risk than residential lending, therefore, may be higher interest rates and shorter terms.
- Is not regulated under the FCA.

Factors when lending to a limited company

- Is the person promoting the advance acting on behalf of the company?
- Is the company a close company?
- Shares owned by an individual or a family.
- Does the company's memorandum permit it to borrow?
- It is demonstrated by a minute of a formal meeting.
- Is the company a good credit risk?
- Three-year assessment of performance?
- Building Societies cannot hold more than 25% of assets in loans to limited companies secured on land.

Guarantors

- Lenders may require when lending to a company, that the directors personally become guarantors.
- This is to ensure that if the company (a separate legal entity) defaults, the owners of the company can be pursued for the money.

Executors and trustees

Personal representatives

- Act in managing the estates of deceased persons. They are:
  - Executors if named in a will.
  - Administrator if appointed by Letters of Administration (no will).
- Lenders can lend to personal representatives if the loan is for administering the estate.

Trustees

- Have the responsibility of dealing with trust property, by the terms of a trust deed, in the interests of the beneficiaries.
- If the trust deed contains the power to create a mortgage, a lender may be prepared to make a loan.

Power of Attorney

- It's worth noting LPAs replaced the previous Enduring Power of Attorney (EPA) system. EPAs set up before 1 October 2007 will still be valid, whether or not they have been registered, though they must be registered when the person loses capacity. For more, see the Government's EPA info.

The Health and Welfare Lasting Power of Attorney

- In a nutshell, the health and welfare document sees a nominated individual make decisions over day-to-day healthcare and medical treatments, as well as deal with any health and social care staff. It's also worth noting these are two separate legal procedures that are independent of one another.
- Just because you give the trusted person power of attorney over your health, that doesn't mean they will automatically gain control over your financial affairs and vice versa. If you require the same individual to have power of attorney over both aspects of your care, then you will have to fill out the two forms separately.
- Another key difference is that the health and welfare LPA can only be used after the person loses capacity, not before.

Power of Attorney Cost

- There's a compulsory cost of £82 to register a Power of
- It's £82 each for the property and finance LPA and the health and welfare LPA, so if you get both, that's £164.

Why Set Up a Lasting Power of Attorney?

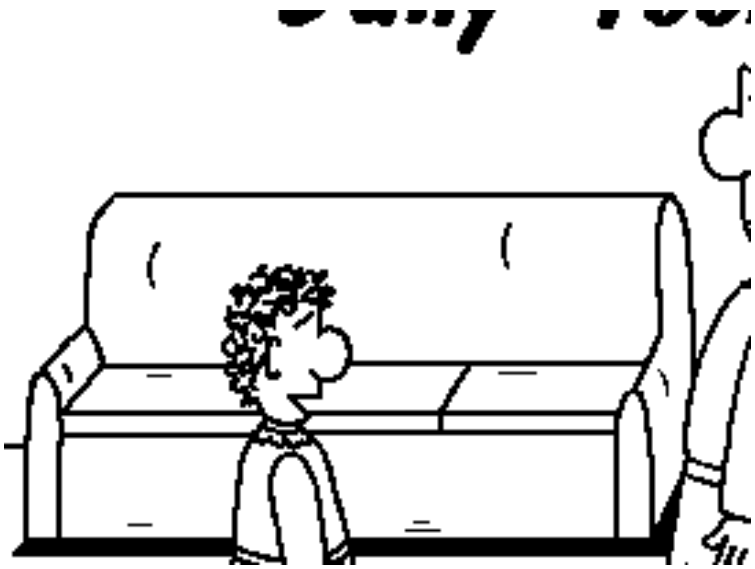
- If you lose mental capacity, unless you've already filled in the Power of Attorney forms, your loved ones will need to apply through court to become 'deputy', a long and expensive process.
- Instead, you can nominate a trusted friend or relative before you lose capacity, by setting up a Lasting Power of Attorney (LPA). You can appoint one or more representatives to act for you and can determine how they work together to make decisions on your behalf.
- You can only set up a Lasting Power of Attorney when you have mental capacity. Once you've lost capacity, it's too late.
- In Scotland, there are three Powers of Attorney: one for financial matters, called a continuing Power of Attorney; one for personal welfare, a welfare Power of Attorney; and a combined POA that covers both continuing and welfare, which is the most common.
- When you make a Power of Attorney in England and Wales, a 'certificate provider' decides if you're capable of making that choice.

Application

- Once submitted, it takes up to ten weeks to register. The power will be effective as soon as the LPA is registered so the attorney will be able to start making decisions straight away unless they specify otherwise on the application.
  - Step 1. Decide whether to use a solicitor
  - Step 2. Doing it yourself? Make your application via an online form
  - Step 3. Register the Power of Attorney

Guarantors and Sureties

- A guarantor is someone who makes a legally enforceable contractual commitment to be responsible for paying back the loan if a principal borrower defaults.
- A surety is a guarantor who puts up something of value as collateral.
- Lenders call their newest products "Guarantee Mortgages" and these use guarantors to reduce the risk for the lender.



Voluntary Housing Sector

- Registered Social Landlords (RSLs) often referred as housing associations, which are non-profit-making organisations that provide housing for rental or purchase.
- The Housing and Regeneration Act 2008 abolished the Housing Corporation, which until that time had been responsible for Registered Social Landlords and created two new bodies.
  - The Homes and Communities Agency.
  - The Tenant Services Authority.
- The Act created a new term 'registered providers'.
- Many financial institutions are prepared to make long-term funds available to well-run associations.

Homes and Communities Agency HCA

- Provides affordable housing in developing communities
- Sponsored by government and local government
- The Localism Act 2011 covers issues surrounding proving local housing
- Being a Registered Provider enables organisations to get grants to develop areas

Clubs and Associations

- Clubs and associations are able to borrow only if their rules and terms of reference allow.
- Managed by committees on behalf of their members.

Ineligible Borrowers

Mental incapacity

- Persons of unsound mind cannot borrow in their own right.
- A person of unsound mind cannot make a power of attorney.
- If such a person requires housing to be funded by a mortgage, a person appointed by the Court of Protection represents them.

Minors

- Persons under 18 years of age.
- Law of Property Act 1925: a minor cannot hold an interest in land.
- Minor's Contracts Act 1987: a minor cannot be bound by a contract unless it is for "necessities".
- Mortgages are not available to persons under 18.
- Consumer Credit Act 1974 – a minor cannot enter into an agreement regulated by this Act - if they do the contract is unenforceable.

Insolvency

- Insolvency occurs when
  - A person's liabilities exceed his assets; or
  - A person cannot meet his financial obligations when they fall due.
  - Insolvency arises when an order is made under the Insolvency Act 1986.

Bankruptcy

- A person's liabilities exceed his assets;
- A person cannot meet his financial obligations within a reasonable period of their falling due.
- The order usually remains in force for 1 year under the Enterprise Act 2002.
- During this time:
  - The person is an un-discharged bankrupt.
  - He cannot borrow more than nominal amounts.
- After that time
  - He can borrow if a lender is prepared to lend.
  - Earlier bankruptcy must be declared.

Individual Voluntary Arrangements (IVAs)

- An IVA is an alternative to bankruptcy.
- The debtor arranges with creditors to reschedule outstanding debts over a certain period.
- Creditors with at least 75% of the debts must agree to the arrangement.
- Persons subject to IVAs are a poor credit risk
- Although there is nothing legally to prevent an individual who is in an IVA from borrowing.

Debt Relief Orders

- Brought in as a result of legislation, DROs allow people in debt to receive years grace and then for the loans to be wiped out. These people will have their credit record tarnished for many years to come.
- People need to be struggling with debt, have limited disposable income and no assets
- After a year of the lenders not being able to enforce payments, so long as they have kept to the conditions, the debts are written off.
- The Insolvency Service and approved advisers can arrange DROs
- Conditions to apply are:
  - Domiciled in England and Wales
  - Owe £30,000 maximum
  - Their assets must not exceed £2,000
  - Have a disposable income of no more than £75
  - Not have applied for bankruptcy or a DRO in the previous 6 years

Mortgage Regulation

- Few people can believe it, but the advice and running of a residential mortgage was unregulated 15 years ago. In 2004 they became regulated, the FCA provides rules and guidance on how these are sold and run. MCOBs rule the waves but not for every mortgage.
- Mortgages sold to individuals are regulated as are loans to finance a property where more than 40% of the property is being used as the main dwelling. You may hear the word MCD – Mortgage Credit Directive – which came In during 2016 and tightened up the rules of mortgage lending and admin. Most mortgages today are effectively MCD regulated because they adhere to these new rules.
- MCD was renowned for bringing second charge loans into regulation. These are loans secured on property where the owner already has a first mortgage on it. They are generally more expensive but readily available compared to first loans.
- Loans not in the team are "buy to lets" unless they are being granted to a consumer who didn't want to let the property, but have to because of the situation. These are known as consumer buy to lets. Professional Landlords who take our buy to let mortgages are not regulated, the definitions are strict but usually stipulate 4 or more houses to be owned or a landlord that wants to become a full-time landlord, not someone who just stumbled across a buy to let need.
- Corporate loans are excluded and well outside the CeMAP syllabus.
- Lifetime mortgages are in the club of regulated loans, and rightly so. Thes loans occupy the later life lending market and include home reversion plans which are not loans at all but regulated as such. Separate MCOB rules must be adhered to for lifetime mortgages and home reversion plans. Smart regulations to protect the consumer, and keep them in their home until death or moving into a care home.
- The newest member of the later life market is RIOs – retirement interest-only mortgages – these are regulated but are sold by standard mortgage advisers – you need special permission and exams to advise in the later life market. RIOs are interest-only mortgages with no end date – they are repaid on death.
- Home purchase plans, also known as Islamic Finance, are also regulated. To appreciate these products, an understanding of Sharia or Islamic Law is needed. Thou shall not receive or pay interest is the mantra, and a traditional mortgage falls foul of this since interest is both paid and received by the bank.

Buy to Let Mortgages

- Previously Buy to Let mortgages were not regulated by the FCA since they fall outside of the 40% rule and are generally not lived in by family members.
- This has now changed with the FCA preferring to distinguish between:
  - Buy to Let mortgages arranged by a business and
  - Buy to Let mortgage arranged by an individual or consumer
- They're regulating the one arranged by a consumer but not the one organised by a business. The vast majority of professional landlords who use Buy to Let mortgages to build up their property portfolios, do so via a company of some sort to minimise taxation.
- The FCA recognises that some people inherit a buy to let mortgage with a let to buy, where their existing home is rented out on a temporary basis whilst they live elsewhere. These people need protection, and the mortgage needs to be regulated. Providers of these will have to adhere to the MCOBs from now on.

Second Charge Lending

- In a similar manner to Buy to Lets, 2nd Charge Lending is now under the guidance of the FCA and providers must adhere to the MCOBs.
- And rightly so. They are dealing with consumers, often arranging large sums on the security of residential homes. They offer slightly easier lending terms with the ubiquitous higher interest rates.
- So rather than be regulated by the new CONC, which provide the rules for firms involved in the consumer credit market, providers are pretty much on par with first charge mortgage lenders.

Unfair Practices

- Mortgage cold call selling will not be allowed.
- Excessive fees will not be permitted.
- Key Facts Illustrations must illustrate fees.
- All mortgage arrangement fees must be included in APR.

Mortgage Conduct of Business Rules MCOB Summary

MCOB 1	Application and Purpose	• Helps firms understand which parts of the MCOB rules apply to them provides guidance on the application of other parts of the FCA Handbook
MCOB 2	Conduct of Business Standards: General	• General requirements that apply throughout the mortgage sourcebook • Communications must be clear fair and not misleading • Rules on inducements
MCOB 2A	Mortgage Credit Directive	• Requirements of MCD
MCOB 3A and 3B	Financial Promotions	• Content requirements for qualifying credit promotions • Rules banning unsolicited real-time promotions (cold calling)
MCOB 4 and 4A	Advising and Selling Standards	• Initial disclosure • Independence • Suitability of advice • Non-advised sales
MCOB 5 and 5A	Pre-application disclosure	• Timing and content of the key facts illustration (KFI+) or ESIS
MCOB 6 and 6A	Disclosure at offer stage	• Content of the offer document
MCOB 7, 7A and 7B	Disclosure at Start of Contract and After-Sale	• Start of contract information requirements • Annual statements • Information requirements for post-sale contract variations (such as further advances) • MCD requirements for further advances

MCOB 8	Equity Release: Advising and Selling Standards	• A tailored regime for advising and selling lifetime mortgages
MCOB 9	Equity Release: Product Disclosure	• Tailored product disclosure requirements for lifetime mortgages
MCOB 10 and 10A	Annual Percentage Rate	• How to calculate the Annual Percentage Rate of Charge (APRC)
MCOB 11 and 11A	Responsible Lending	• Requirement for lenders to check the consumer's ability to repay
MCOB 12	Charges	• Charges in key areas (for example, arrears and early repayment charges) must be reasonable, based on the cost to the lender • Charges must not be excessive
MCOB 13	Arrears and Repossessions	• Information requirements for fair treatment of borrowers in arrears and facing repossession
MCOB 14	MCD Provisions	• Provisions of the MCD in respect of credit arrangements

MCOBs In Detail

MCOB 1: Application and purpose

- Explains the scope of the rules, i.e. to whom they apply and for what types of mortgage.

MCOB 2: Conduct of business standards

- Includes:
  - the use of correct terminology ('early repayment charge' and 'higher lending charge');
  - the requirement for communications with customers to be 'clear, fair and not misleading';
  - rules about the payment of fees/commission and the accessibility of records for inspection by the FCA.

MCOB 2A: Mortgage Credit Directive

- Includes rules on a range of matters that apply to a lender classed as a Mortgage Credit Directive mortgage lender, including:
  - remuneration;
  - the tying of products (making a mortgage conditional on the purchase of other products);
  - foreign currency loans; and early repayments.

MCOB 3A: Financial promotions

- Distinguishes between 'real-time' promotions (by personal visit or telephone call) and non-real-time (by letter, email, or advert in newspapers, magazines, or on television radio or the internet).
  - Unsolicited real-time promotions are not permitted.
  - Non-real-time promotions must include the name and contact details of the firm. They must be clear, fair and not misleading. If comparisons are used, they must be with products that meet the same needs.
  - They must state that 'your home may be repossessed if you do not keep up repayments on your mortgage'. Records of non-real-time promotions must be retained for one year after their last use.

MCOB 3B: MCD general information

- Specifies the requirements relating to information that must be provided to customers, for lenders who make mortgage advances regulated under the Mortgage Credit Directive.