

# For Mortgage Lenders

## TREASURY CONSULTS ON REGULATION

The Treasury have announced a consultation about the proposed changes to regulation with the splitting of the FSA work.

Key aspects:

- The responsibility for Prudential regulation will move to the Bank of England and the team at the FSA responsible for this will become a subsidiary of the Bank of England. The new body will be the PRA – Prudential Regulation Authority – and will be responsible for the prudential regulation non-deposit taking banks, building societies, insurance companies and investment banks. The PRA will take instructions from the FPC (the Financial Policy Committee) as to any increases in capital to control markets at any given time and the FPC can also give suggestions for rule changes. The FPC could have a similar control over the new CPMA (Consumer Protection and Markets Authority) on macro prudential rules.
- The part of the FSA that deals with the conduct of business rules will become the CPMA. All firms currently regulated by the FSA will fall under this body. The body's statutory responsibility will be to promote confidence in financial services and markets. This will include protecting consumers and promoting confidence in the integrity and efficiency of the UK's financial markets.
- The new CPMA will also be responsible for the arms length oversight of FOS, Consumer Finance Education Board and the FSCS.
- The CPMA will also have a separate Markets Division to regulate the wholesale markets and infrastructure such as investment exchanges.
- In considering the changes they are also going to look at combining all consumer credit with the CPMA as opposed to just secured lending proposed in the last Treasury Consultation. A new consultation will be announced in the autumn. They will only make the move if there is a positive outcome to the consultation. The timetable for secured lending will therefore be slower than anticipated.
- Consideration is also to be given to transferring the responsibility for prosecuting offences such as insider dealing and other market abuses to a new Economic Crime Agency.



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# OFT IRRESPONSIBLE LENDING GUIDELINES

The OFT have published the feedback from their consultation on irresponsible lending as well as an updated of their irresponsible lending guidance.

## Equity Lending

Amongst the key points from the feedback was the OFT's surprise that some firms seemed to think that the issues being raised are new and have not previously applied. The OFT's view is that the guidance is only clarification of what they expect of firms when considering their fitness for holding a licence and that firms should already be acting in the appropriate manner.



The OFT make particular reference to part of their 'Non-Status Guidelines for Lenders and Brokers' first published in 1997 as follows:

**'Where there is doubt over whether the borrower will be able to afford the repayments, the loan should not be made. If a lender fails to check the borrower's ability to repay a loan secured on the borrower's property, this will be irresponsible lending.'**

**'Although the guidelines apply only to secured lending to non status borrowers, I [the then Director General of Fair Trading] would hope that all lenders and brokers will consider the extent to which the principles of good business practice contained in the guidelines may be applied to all aspects of their business activity.'**

It has always been the case, therefore, that the OFT have disapproved of the practice of lending only against equity in the property.

The OFT have confirmed that the rules only apply to regulated credit agreements and therefore business lending is generally excluded.

## Explanation of credit products

The new consumer credit directive will require either the lender (or intermediary if they are making the sale) to provide an adequate verbal explanation of certain features of credit agreements before the agreement is made.

This new legal requirement comes into effect from 1 February 2011 but does not legally apply to loans over £60,260, loans secured on land or overdraft agreements (except those for non-business purposes where the credit is not repayable on demand or within three months in accordance with section 74(1D) of the Act).

However, the OFT expect firms to apply the principles of the new rules to all their business as appropriate – e.g. to highlight key risks to the borrower such as the potential consequences of missing payments or under-paying, including the risk of repossession of property on which a loan is secured where applicable.

Firms will need to consider how they manage this aspect going forward.

It is acceptable to ask borrowers to tick a box or sign a declaration confirming they have been given an explanation but firms cannot ask them to state that it was adequate or that he has understood it since the borrower will not be in a position to judge that.

## Provision of executed agreement

From 1 Feb 2011 creditors must give a copy of the executed agreement to the borrower or if they have already had an exact copy must confirm in writing that the agreement has been executed. Executed means that it must have been signed by both parties.

## Debt Collection

An updated version of the Debt Collection Guidance is expected to be issued in Autumn 2010 which will incorporate updates in practices and codes of conducts since the last Guidelines issued in December 2006. The OFT expect firms recovering debts to consider the Irresponsible Lending Guidelines as well as the Debt Collection Guidelines in the interim.

## Court Action

Following the Ministry of Justice review on considering a minimum threshold on orders for sale applications for CCA debts only the Government is expected to announce more protection against aggressive bailiffs and unreasonable charging orders to ensure the courts have the power to ensure that repossession is a last resort and ban orders for sale on unsecured debts of less than £25,000.



## Guidelines

The guidelines exist primarily to explain to firms how the OFT will consider firms fit to hold a Consumer Credit Act licence. The guidance only applies to loans regulated by the act although the OFT hope that firms will apply the principles across all of their business in the same way the FSA expect firms to treat all of their customers fairly.

The key exemptions for loans to be excluded from regulation are:

- Loans to certified high net worth individuals
- Loans for business purposes *exceeding* £25,000 (further advances therefore need to be over £25,000)
- Loans secured on investment properties
- FSA regulated loans
- Loans not made to an individual or partnership of 3 or less people

Whilst it is important that firms consider all the aspects of the guidelines in the way in which they conduct their business some points which may be worth looking at are:

- The need to ensure that policies and procedures reflect the need to take into account any lack of mental capacity at the time to deal with maintaining payments or dealing with arrears decisions (see section 7.3 and also 7.13)
- Considering reducing or stopping interest and charges and/or allowing deferment of arrears payments (7.4)
- Ensuring suspension of active pursuit of a borrower in default or arrears for a reasonable period of time where there is evidence of a debt advisor assisting the borrower in agreeing a repayment plan (7.12)
- Ensuring default and other charges for arrears are reasonable and only cover the additional costs involved (7.15)
- Ensure record keeping to evidence regulatory compliance in all aspects (section 8). This includes training records, monitoring and the ability to produce data on arrears on request (8.3).
- Review procedures in line with the new Consumer Credit Directive requirements and the transitional arrangements as set out in Annex 1 and 2
- Consider how responsibility for the conduct of agents and third parties impact them (Annex 3)

The full Guidelines can be found at:

[http://www.of.gov.uk/shared\\_of/business\\_leaflets/general/of1107.pdf](http://www.of.gov.uk/shared_of/business_leaflets/general/of1107.pdf)

# ON LINE NOTIFICATION SYSTEM

# HANDBOOK UPDATE 104

We have been asked by the FSA to remind our firms that as from October 4 Firms Online and many paper based notifications and applications will be replaced by ONA, the FSA's new online notifications and applications systems.



Regulated firms need to register with ONA to ensure that they can check and update their standing data on a regular basis even if they are not submitting any substantive notifications or applications as the FSA has taken the view that the Firms Online login will not be valid on ONA.

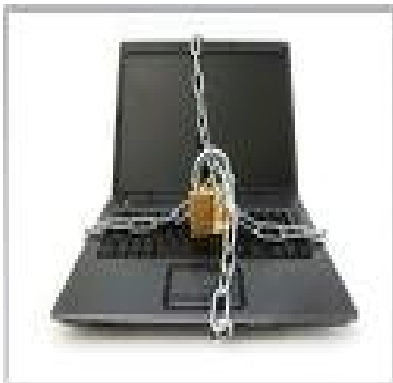
Details of the system and the registration process can be found on the ONA web page:

<http://www.fsa.gov.uk/pages/Doing/Regulated/ona/index.shtml>

A guide to using ONA is also available at:

<http://www.fsa.gov.uk/pubs/other/ona.pdf>

**Regulated firms should register as soon as possible and in any event before the 4th October.**



The latest updates to the paper version of the Handbook have been released and cover sections including:

- Threshold Conditions
- Supervision
- Statement of Principles and Code of Practice for Approved Persons
- Senior Management Arrangements, Systems and Controls
- Client Assets
- Fees

For full details of the individual updates go to :

<http://www.fsa.gov.uk/pages/Library/Policy/Handbook/Releases/2010/104.shtml>

and click on the desired section(s).



## OTHER NEWS ITEMS

### Fines

RBS were fined £5.6 million for failures in applying financial sanctions checks properly in the year to 31st December 2008.

Zurich were fined £2.275 million for losing a back up tape with customers details on even though no loss was suffered by any customer



### Data Protection Act

Failing to adequately deal with requests for personal information topped the list of complaints to the ICO under the Data Protection Act. Lenders came top of the list of sectors generating the most complaints under the Act.

Since April 2010, 16 formal undertakings have been signed by Chief Executives following investigations into data losses at their organisations by the ICO. Most the cases involved the loss or theft of mobile data storage devices – memory sticks, laptops or discs – containing unencrypted sensitive personal information.

A new code for protecting personal data applicable to firms capturing information on-line has been published which can be found at:

<http://www.ico.gov.uk/ebook/ebook.htm>

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*Helping you to make the difference*

***Jackson Cohen specialise in providing a range of compliance support services for lenders.***

***As well as providing compliance services to Bank and Building Society customers we also have a strong niche connection with Short Term Lenders.***

***If you feel you need assistance with any of the issues in this update or other aspects of compliance then please feel free to contact us to see how we may be of assistance.***

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