

For Mortgage Lenders

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 Jackson Cohen

JACKSON COHEN ASSOCIATES LTD

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MORTGAGE MARKET REVIEW RESPONSIBLE LENDING CP10/16

The FSA have published the next part of their mortgage market review consultations which this time is themed on responsible lending but also catches issues such as capital adequacy and liquidity for non-deposit taking lenders.

The full paper can be read at:

http://www.fsa.gov.uk/pubs/cp/cp10_16.pdf

A summary of the key points can be read at:

<http://www.jacksoncohen.com/ResplendAug2010.pdf>



QUARTERLY CONSULTATION CP10/15

Points of interest include:

FSCS

To restrict the rights of the FSCS to apply a levy in the year of leaving only in respect of anticipated compensation and management fees occurring in the year of leaving.

To allow the FSCS to apply an exit levy when a firm exits one area but remains authorised in other areas.

RMAR

There are few proposals that will mainly impact personal investment firms with some minor amendments to wording of the guidance notes for home finance intermediaries.

The reference to readily realisable own funds will be removed.

Some additional clarification has been provided around the requirements following the change to PI Insurance effective from 31 December 2009.

FSA015

Applies to Banks, Building Societies and UK Consolidation groups who are being given further guidance to improve their reporting of arrears, losses etc to improve the ability of the FSA to understand the credit quality of their portfolio.

Full details can be found at:

http://www.fsa.gov.uk/pubs/cp/cp10_15.pdf

Inside this issue:

Financial Crime Newsletter	2
Redstone fined for Arrears and Repossessions	2
Financial Services Act 2010	3
Unauthorised and Unregulated Collective Investment Schemes	3
Consumer Credit Directive Legislation	4



FINANCIAL CRIME

The FSA have issued their latest newsletter:

http://www.fsa.gov.uk/pubs/newsletters/fc_newsletter14.pdf

Some of the highlights:

Fraud

The FSA will be visiting mortgage lenders during 2010. The key aim of this work is to improve lenders' systems and controls and to strengthen their ability to manage and report on financial crime risks associated with increased business levels. They will also expect firms to know about their IFL (Information From Lenders) scheme for firms to report suspected fraud cases to them.



See the FSA's first full report on good and poor practices (on commercial brokers) here:

http://www.fsa.gov.uk/pubs/anti_bribery.pdf

Financial Crime

The FSA's first review of small firms found that whilst generally they know your customer/ID issues were well covered few firms had appropriate procedures and controls in place for higher risk customers – especially those not buying products face to face. Additionally there were shortfalls in dealing with the requirements of the Financial Sanctions Register.

Bribery Act

The Act comes into force in October and firms that use third parties to win business need to consider the impact on their business.

The Act is applicable to all sectors and makes adequate systems and controls to prevent bribery and corruption a legal requirement and introduces a new offence in commercial organisations negligently failing to prevent bribery.

Firms should review their practices and procedures against the 'good and poor' practices pub-

http://www.fsa.gov.uk/smallfirms/pdf/financial_crime_report.pdf

REDSTONE FINED FOR ARREARS AND REPOSSESSION FAILINGS

The failings included:

- Failing to assess if a proposed agreement to pay was reasonable and sustainable for the customer or if there were alternatives that could be considered
- Having a policy that automatically moved to litigation when customers were two months in arrears regardless of circumstances which resulted in arrears handlers focusing on gaining agreements to keep arrears below two months regardless of personal circumstances. This policy sometimes meant the incurring of unnecessary legal costs
- Had a policy of applying for suspended possession orders in order to secure an agreement to pay even where the borrower had proposed an agreement to pay that had been reasonable for their circumstances.



- Issued repetitive, excessive and sometimes confusing correspondence;
- Failed to inform customers:
 - (a) of their right to refuse a field counsellor; and/ or
 - (b) that a field counsellor had been instructed and/or to notify them of the date and time of a proposed field counsellor visit, thereby depriving customers of the opportunity to refuse or cancel the visit without charge
- Applied charges that were unfair and/or excessive – e.g. repeated bounced debit charges regardless of how many times they re-presented in the month, arrears charges included in early repayment charges, incorrect charging of fees.

Full findings at:

<http://www.fsa.gov.uk/pubs/final/redstone.pdf>

The FSA have some new powers under the act which will enable them, amongst other things, to issue fines on individuals performing controlled functions without approval and to impose suspensions and restrictions on authorised persons.

Details of how they will be implemented and feedback from firms can be found at:

http://www.fsa.gov.uk/pubs/cp/cp10_18.pdf



UNAUTHORISED AND UNREGULATED COLLECTIVE INVESTMENT SCHEMES

The FSA secured a High Court ruling against a firm of accountants for running an unregulated collective investment scheme resulting in over £3m of compensation being paid out.

Separately they have warned IFA's of the dangers of unregulated collective investment schemes with 11 firms facing restrictions. They have pointed out that many investment advisors wrongly believe that unregulated schemes do not fall under FSA advice rules.

There are many firms inadvertently running unregulated collective investment schemes

Since some lenders use Unregulated Collective Investment Schemes (different to unauthorised which are illegal) as a source of funding it is worth noting that:

- Firms must have FSA approval to run an UCIS
- There are restrictions on marketing of UCIS
- Appropriately authorised investment advisors can sell the scheme to certain investors under very strict rules
- Any Lender wishing to use an Investment Advisor to sell the scheme should ensure the intermediary has the right authorisation and has the necessary understanding of the rules



UCIS for lenders are, briefly, schemes where investor money is pooled into a loan where the day to day management of the loan is carried out by the lender. Generally, but not always, the loans are held in trust for the investors. The rules are complex and any firm who operates using pooled investor funds (syndicated loans) should ensure they take proper advice as to whether or not they are operating a Collective Investment Scheme which requires authorisation as a UCIS.

CONSUMER CREDIT DIRECTIVE LEGISLATION

There are new regulations implementing the Consumer Credit Directive. The key new elements in the new consumer credit regime are:

- a duty on the lender to provide adequate explanations about the credit on offer to the consumer
- an obligation on the lender to check creditworthiness before offering or increasing credit
- requirements concerning credit reference databases
- a right for consumers to withdraw from a credit agreement within 14 days, without giving any reason
- requirements to inform consumers when debts are sold on
- requirements on credit intermediaries to disclose fees and links to creditors a right to make partial early repayments of credit

In addition, the CCD amends existing consumer credit law in a number of areas, including advertising, consumer information, and the calculation of the total charge for credit.

Lenders have until 31 January 2011 to comply with the new regulations. This means that for those lenders who are in a position to start using the new provisions, they can do so now. Any agreement signed on or after 1 February 2011 must comply with the new legislation.

Full details can be found at the new Legislation.gov.uk website which replaces OPSI:

<http://www.legislation.gov.uk/ukxi/2010/1010/contents/made>

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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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