

Buy-to-let mortgages – implementing the Mortgage Credit Directive Order 2015

February 2015



Contents

Abbreviations used in this document	3
1 Overview	5
2 Proposed Handbook changes	8

Annexes

1 Summary of CBTL aspects of The Mortgage Credit Directive Order 2015	13
2 Cost benefit analysis	17
3 Compatibility statement	21
4 List of questions	24

Appendix

1 Draft Handbook text	25
------------------------------	----

We are asking for comments on this Consultation Paper by 19 March 2015.

You can send them to us using the form on our website at:
www.fca.org.uk/your-fca/documents/consultation-papers/cp15-03-response-form.

Or in writing to:

Mortgage Policy Team
Banking, Lending & Protection Department
Strategy & Competition Division
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Telephone: 020 7066 9388
Email: cp15-03@fca.org.uk

We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

You can download this Consultation Paper from our website: www.fca.org.uk. Or contact our order line for paper copies: 0845 608 2372.

Abbreviations used in this document

BTL	buy-to-let
CBA	cost benefit analysis
CBTL	consumer buy-to-let
CJ	Compulsory Jurisdiction
DEPP	Decision Procedures and Penalties Manual
DISP	Dispute Resolution: Complaints
EG	Enforcement Guidance
FCA	Financial Conduct Authority
FEES	Fees Manual
FSMA	Financial Services and Markets Act
MCD	Mortgage Credit Directive
MLAR	Mortgage Lenders and Administrators Return
PERG	Perimeter Guidance
SUP	Supervision Manual
VJ	Voluntary Jurisdiction

1. Overview

Introduction

- 1.1** The Mortgage Credit Directive (MCD) introduces a European framework of conduct standards for firms selling mortgages.
- 1.2** The government has chosen to use an exemption in the MCD that means member states do not have to apply the Directive's requirements to buy-to-let mortgage activity. In order to rely on this exemption, a member state must have in place an appropriate framework for this type of activity from 21 March 2016. The government has established in legislation a framework for 'consumer buy-to-let' (CBTL) mortgages.¹ The FCA is required to implement this framework.
- 1.3** The government's appropriate framework and supporting legislation does not give the FCA general rule-making powers, such as the ability to modify the conduct standards which firms will be expected to follow. However, we have been given powers to register, supervise and enforce against firms in relation to this framework. This consultation paper outlines our proposed approach to implementing the framework, including our proposed Handbook changes to allow us to use those powers when necessary.
- 1.4** The section on 'complaints and redress' in Chapter 2 is issued jointly with the Financial Ombudsman Service.

Who does this consultation affect?

- 1.5** This consultation will affect lenders, administrators, intermediaries and consumers in the buy-to-let mortgage market.

Is this of interest to consumers?

- 1.6** These proposals will interest consumers who may wish to take out a buy-to-let mortgage from 21 March 2016, when the government's CBTL framework comes into effect. However, not every individual applying for a buy-to-let mortgage will be defined as a consumer under the legislation. This is explained in more detail below.

¹ Part 3 of The Mortgage Credit Directive Order 2015, www.gov.uk/government/consultations/implementation-of-the-eu-mortgage-credit-directive. This framework also applies to lending that falls under MCD Article 3(1)(b), where the consumer is using a loan to acquire or retain rights in land or property to be used for buy-to-let purposes.

Context

The MCD and buy-to-let mortgages

- 1.7** Member states must implement the MCD by 21 March 2016. We recently consulted on what this will mean for the regulation of residential mortgages.²
- 1.8** In September 2014, the Treasury consulted on its proposed legislative changes to enable the effective implementation of the MCD.³ As part of this, it set out its position on how buy-to-let mortgages would be treated under the MCD.
- 1.9** At present, the vast majority of buy-to-let lending is unregulated.⁴ The government gave the Financial Services Authority (our predecessor regulator) powers to regulate the mortgage market in 2004. At that time, the government decided that, in order for mortgage lending to be regulated, at least 40% of the property must be occupied, or intended to be occupied, by the mortgage borrower or a relative.
- 1.10** The MCD imposes some requirements on member states for buy-to-let mortgage activity. The government has sought to put in place the minimum requirements to meet these legal obligations. First, the government's legislation is clear that firms will not have to apply any MCD requirements to a customer who is deemed to be, or has identified themselves as, acting by way of business in taking out a buy-to-let mortgage. The legislation sets out a series of circumstances which would constitute a buy-to-let customer acting by way of business.
- 1.11** In addition the government's legislation uses an exemption in the MCD that allows member states not to apply the Directive to consumer buy-to-let activity if they have an appropriate framework for regulating these mortgages. The government intends to use this exemption through the establishment of an appropriate framework set out in legislation. Having consulted on the detail of its appropriate framework, the government published its summary of responses and the legislation on 26 January 2015.
- 1.12** The government's legislation establishes a set of conduct standards, based on MCD Articles, which will apply to a firm conducting broking or lending activity with a buy-to-let consumer.
- 1.13** The legislation applies to firms' CBTL activities from 21 March 2016. A summary of some of its key points, including its definition of when a customer is acting by way of business and the areas to which conduct standards will apply to CBTL firms, is provided in Annex 1. Once finalised, our rules subject to this consultation would also come into force from 21 March 2016.

Consultation scope and summary of proposals

- 1.14** The government's appropriate framework and supporting legislation does not give the FCA general rule-making powers, such as the ability to modify the conduct standards which firms will be expected to follow. It does, however, give us powers to register, supervise and – where appropriate – take action against firms carrying out CBTL activity.

² CP14/20, Implementation of the Mortgage Credit Directive and the new regime for second charge mortgages (September 2014): www.fca.org.uk/static/documents/consultation-papers/cp14-20.pdf. We aim to publish our policy statement and final rules by the end of the first quarter of 2015.

³ Implementation of the EU mortgage credit directive, HM Treasury (September 2014) www.gov.uk/government/consultations/implementation-of-the-eu-mortgage-credit-directive

⁴ The broking of buy-to-let mortgages does, however, currently constitute regulated credit broking (Article 36A of the Regulated Activities Order). In addition, if a firm is authorised to enter into a regulated mortgage contract, secured BTL loans are classed as qualifying credit and therefore subject to financial promotions rules in MCOB 3 (see PERG 8.17.3G). Since 1 April 2014, buy-to-let broking has been regulated by the FCA; but from 21 March 2016 this activity will move out of FCA regulation and, if it is consumer buy-to-let business, into the new appropriate framework.

- 1.15** We are now consulting on the Handbook changes we believe necessary to ensure that our use of those powers is consistent with government’s legislation and our statutory objectives.
- 1.16** In chapter 2, we set out the following proposals:
- The **registration processes** that firms, with or without existing FCA permissions, will need to follow to register with us as CBTL firm;
 - **Aggregated data reporting** from CBTL lenders to support our risk-based approach to supervision and inform our understanding of CBTL activity;
 - **Complaints handling rules** to support the government’s widening of the Financial Ombudsman Service’s (the ombudsman service) compulsory jurisdiction to capture CBTL firms; and
 - **Modifications to other Handbook modules to incorporate CBTL**, including changes to our Supervision Manual (SUP), Enforcement Guidance (EG), Decision Procedures and Penalties Manual (DEPP), Perimeter Guidance (PERG), and our Glossary.
 - We provide an early indication of our approach to fees, which will be consulted on separately.
- 1.17** These proposals are supported by our cost-benefit analysis in Annex 2 and a breakdown of how our proposals support our objectives in Annex 3.
- Equality and diversity considerations**
- 1.18** We have assessed the likely equality and diversity impacts of the proposals and do not think they give rise to any concerns. We would welcome comments from any interested parties.

Next steps

What do you need to do next?

- 1.19** We want to know what you think of our proposals. Please send us your comments by 19 March 2015. You can find a consolidated list of questions in Annex 4. We are proposing a six-week consultation period, as opposed to three months, as we are consulting on the operational Handbook changes to implement the CBTL regime in line with the powers and limitations we have under the legislation, rather than detailed policy proposals.

How?

- 1.20** You can use the online response form on our website or write to us at the address on page 2.

What will we do?

- 1.21** We will consider your feedback and aim to publish our rules in a Policy Statement in June 2015.

2. Proposed Handbook changes

Registration

- 2.1** The government's legislation requires that, from 21 March 2016, a firm acting as a lender (including engaging in pre-contractual activities), administrator, intermediary, arranger or carrying out advisory services in relation to CBTL ("CBTL firms") must be registered by the FCA. A firm carrying out these activities without having registered by this date may be committing a criminal offence if it is otherwise unauthorised by the FCA.
- 2.2** To be registered by us, a firm should apply using a form that will be made available on our website in due course. Consumers will be able to check the Financial Services Register⁵ to see whether a firm is registered by us to carry out CBTL activity.
- 2.3** The government has established a series of conditions that firms must satisfy in order to become registered. These conditions are more prescriptive where a firm:
- is not already authorised by us
 - does not hold an interim permission
 - or has otherwise had its CBTL registration revoked

We are therefore tailoring our proposed registration processes to account for these different situations.

- 2.4** From our analysis of the buy-to-let market, we expect that the vast majority of firms that conduct CBTL activity will already hold either an FCA permission to carry out regulated activities (such as entering into, advising on or arranging home finance activity) and/or an interim permission for consumer credit. We are aware of only a small number of buy-to-let lenders that do not also hold permissions to carry out regulated activity.

Firms with existing Part 4A or interim permissions

- 2.5** In line with the legislative requirements, we propose a streamlined registration process for firms already regulated by us. We will tell firms in Q3 2015 how to register. This is likely to be limited to requiring the firm to tell us that it carries on, or intends to carry on, CBTL activity and request entry onto the CBTL Register.

⁵ www.fca.org.uk/register

Firms without FCA permissions or their CBTL registration having previously been revoked

- 2.6** For the reasons outlined above, we expect that only a small proportion of firms that need to be registered will not already be regulated by the FCA. This group of firms could, however, include new market entrants.
- 2.7** We will need to ask these firms a more detailed set of questions to satisfy ourselves that each firm meets the entry conditions set out in legislation.⁶ The registration form will ask for details of their controllers, including any convictions and prohibitions, knowledge and competence, and familiarity with the conduct standards set out in legislation.

Accepting and determining applications to register

- 2.8** The legislation requires us to decide on applications for registration within six months from receiving a complete application and 12 months of receiving an incomplete application. These timeframes are consistent with our standards for making decisions on applications for Part 4A permissions.
- 2.9** We anticipate being able to accept firms' applications to register by September 2015. There are limitations in moving this date forward, given the need to consult, analyse responses and publish final rules. However, as the requirements for all firms, both in terms of the registration conditions and conduct standards, are already set out in legislation, we expect firms to prepare their applications in advance. We will publish a sample application form once our rules are finalised to help firms prepare for registration.

Q1: Do you agree with our proposals for registering CBTL firms?

Fees

- 2.10** We will set out proposed registration fees payable by CBTL firms as part of our March 2015 fees consultation. At this stage, we do not anticipate that the fee for already authorised firms registering to become a CBTL firm would exceed £100, with the fee for other firms not expected to exceed £500.
- 2.11** As we anticipate that volumes of CBTL business will be relatively low, we are not proposing to introduce an activity-based calculation of the periodic fees payable by CBTL firms. Instead, we are considering flat fees – one for lenders and one for intermediaries. We anticipate that this proposal is likely to form part of our March 2016 fees consultation, when we will have a clearer understanding of how many firms have registered with us and any consequential effect on our supervisory approach.
- 2.12** At this stage, we want to give firms as much certainty as we can on the levels at which those periodic fees might be set. From a preliminary analysis of implementing similar legislative regimes, we would not expect them to exceed £500 for lenders or £250 for intermediaries.

Aggregate data reporting by CBTL lenders

- 2.13** We need data about firms and their activities so we can supervise them appropriately, and identify and assess risks in financial markets.

⁶ Summarised in Annex 1

- 2.14** We have considered what data we need on firms' CBTL activity to inform our supervisory approach. In broad terms, we need to monitor:
- the volume of CBTL transactions – through lending data;
 - the performance of CBTL loans and individual firms' treatment of consumers in financial difficulty – through arrears, receivers and repossessions data; and
 - the extent of any consumer detriment – through complaints data.
- 2.15** The data we currently collect on the buy-to-let market through the Mortgage Lenders and Administrators Return (MLAR)⁷ is limited to authorised firms, covers only lending activity and does not enable us to separately identify CBTL. We also collect complaints data from authorised firms, but we are unable to disaggregate buy-to-let, or CBTL, from other unregulated home finance activity.
- 2.16** We have considered amending the application and scope of existing reporting mechanisms, such as MLAR and our complaints return, to capture the information we require on CBTL. However, as the government expects CBTL to represent only a small proportion of the buy-to-let market, we believe that doing so would introduce disproportionate systems and process costs for firms, even where they do not lend CBTL mortgages.
- 2.17** We are therefore proposing that CBTL lenders report high-level aggregated lending, performance and complaints data to us using a new, standalone return. The detail is set out in the draft Handbook text in Appendix 1. We propose that firms send us this once a quarter. CBTL firms that are also authorised by us to carry out other regulated activities would continue to be subject to existing regulatory reporting resulting from those permissions.⁸
- 2.18** As our understanding of CBTL activity improves, we may consider adjusting the scope of firms' CBTL reporting requirements. This will be largely dependent on transaction volumes and the extent of any issues we identify. For example, we may choose to reduce the reporting frequency if volumes are much lower than anticipated. Alternatively, we may choose to collect more detailed data from lenders, or introduce CBTL reporting requirements for intermediaries, if we need to deploy a more intensive supervisory approach. We would not expect to make a judgement on this in the short term, and would consult on any further changes.

Q2: Do you agree with our proposals for collecting aggregate data from CBTL lenders?

Complaints and redress

- 2.19** The powers to make rules relating to the Financial Ombudsman Service are shared between the FCA and the ombudsman service. So this chapter is issued jointly by the FCA and the ombudsman service and, where relevant, references to 'we' are to the FCA and the ombudsman service.
- 2.20** At present, the ombudsman service can consider complaints against authorised mortgage lenders relating to buy-to-let mortgages and authorised buy-to-let credit brokers. The government's legislation extends the ombudsman service's compulsory jurisdiction (CJ) to

⁷ SUP 16 Annex 19A

⁸ Following government's decision to remove buy-to-let broking from the consumer credit regime from March 2016, firms will no longer need to provide us with details of their buy-to-let broking activity under any consumer credit regulatory reporting returns from this date.

cover CBTL firms.⁹ It also provides that the ombudsman service can recommend that a firm should pay redress, and the FCA will be able to act against a firm that refuses to do so. We are proposing Handbook changes to effect this. The ombudsman service also proposes to change the voluntary jurisdiction rules to align with these changes.

- 2.21** Once a complaint is considered by the ombudsman service, it is proposed that CBTL firms are subject to the same case fee arrangements that apply to other firms in the CJ. Firms would therefore not pay a case fee for the first 25 cases referred to the ombudsman service each year, with each case after that attracting a case fee, currently £550.
- 2.22** The legislation also allows us to establish appropriate procedures for resolving complaints. Currently, the ombudsman service is not able to consider a complaint until the firm concerned has had an opportunity to consider it. We believe it is important for firms to establish and operate appropriate and effective complaints handling procedures, to ensure that complaints are handled promptly and fairly, and to reduce the number that have to be taken to the ombudsman service.
- 2.23** We therefore propose to apply the majority of our complaints handling rules to firms' CBTL activity. These rules, which are set out in the Dispute Resolution section of the FCA Handbook (DISP), cover a range of issues including complaints handling procedures and controls, timeframes for resolving complaints, the requirement for final response letters and how we expect firms to cooperate with the ombudsman service. As we expect the vast majority of CBTL firms to already hold FCA permissions that bring them into scope of the CJ for those activities, they should already be familiar with the complaints handling rules.
- 2.24** However, we propose some exceptions due to the expected low volumes of CBTL and the extent of our powers under the legislation. For example, we do not intend to alter the application or format of the complaints return set out in DISP and used by authorised firms, or to require firms to publish details of CBTL complaints. Nor do we propose applying the complaints record keeping rule, as the legislation requires CBTL firms to retain relevant information.
- 2.25** As with periodic fees, we will consult on the consequential funding requirements for the ombudsman service as part of our fees consultation in March 2016. At this stage, we anticipate that a flat-rate ombudsman service CBTL general levy for 2016/17 would not exceed £100 per registered firm.

Q3: Do you agree with our proposals for complaints and redress in relation to CBTL firms?

Supervision

- 2.26** The legislation requires that we supervise firms' CBTL activity and that firms cooperate with us generally. The conduct standards which firms will be expected to follow are set out in the government's legislation and are based largely on MCD Articles. We expect to refine our supervisory approach from March 2016. But, broadly, we expect to apply our standard risk-based approach to supervising CBTL firms. The data we propose collecting will help us to understand more about the effects of the distinction in the BTL market created by legislation, the volumes of CBTL business and any supervisory issues at an early stage.

⁹ Article 26 of The Mortgage Credit Directive Order 2015

- 2.27** At this stage, we propose some amendments to our Handbook to effect the supervisory powers given to us. This includes implementing a CBTL appointed representatives regime for CBTL arrangers and advisers (not CBTL lenders) that works in a similar way to our current process for regulated activities. Here, a principal firm would need to be both registered to carry out CBTL activity and authorised to carry out other regulated activity. More generally, we also propose changes to enable either us or a CBTL firm to appoint a skilled person to report on supervisory concerns where necessary.

Enforcement

- 2.28** The legislation also gives us powers to take enforcement action against firms where we deem it necessary. Providing a credible deterrence is at the heart of our approach to enforcement. We propose making changes to our existing Enforcement Guidance (EG) to describe how we could take enforcement action against CBTL firms in line with existing FCA processes. We also propose changes to DEPP, which describes the FCA's decision-making procedures relating to statutory notices¹⁰, financial penalties, or suspension.

Perimeter guidance (PERG)

- 2.29** We propose additions to PERG to give firms clarity on whether they need to be registered by us for the purposes of CBTL. This includes how The Mortgage Credit Directive Order 2015 interacts with the Regulated Activities Order and the CBTL activities that require firms to register.

Q4: Do you agree with proposed changes to our Supervision, Enforcement Guidance, Decision Procedures and Penalties and Perimeter Guidance manuals?

Q5: Do you have any comments on our draft rules in order to implement the CBTL regime set out in legislation?

¹⁰ including *warning notices, decision notices and supervisory notices*

Annex 1

Summary of CBTL aspects of The Mortgage Credit Directive Order 2015

1. The Mortgage Credit Directive Order 2015 was laid in Parliament on 26 January 2015. The BTL aspects come fully into force on 21 March 2016. Although not an exhaustive list of each of the requirements and provisions that CBTL firms would need to follow, this annex summarises the key points in relation to CBTL activity.

Application

2. The legislation dictates that not all buy-to-let activity constitutes CBTL. Article 4 (2), (3) and (4) of The Mortgage Credit Directive Order 2015 sets this out in detail.

(2) *For the purposes of this Part, if an agreement includes a declaration which—*

(a) is made by the borrower, and

(b) includes—

(i) a statement that the agreement is entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower;

(ii) a statement that the borrower understands that, by signing the declaration, the borrower will not have the protection and remedies that would be available to the borrower under this Order if the agreement were a consumer buy-to-let mortgage contract under this Order; and

(iii) a statement that the borrower understands that if the borrower is in any doubts as to the consequences of the agreement not being regulated by this Order, then the borrower should seek independent legal advice,

the agreement is to be presumed to have been entered into by the borrower wholly or predominantly for the purposes specified in sub-paragraph (b)(i), unless paragraph (3) applies.

(3) *This paragraph applies if, when the agreement is entered into—*

(a) the creditor (or, if there is more than one creditor, any of the creditors), or

(b) any person who has acted on behalf of the creditor (or, if there is more than one creditor, any of the creditors) in connection with the entering into of the agreement,

knows or has reasonable cause to suspect that the agreement is not entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.

- (4) *For the purposes of this Part, a borrower is to be regarded as entering into an agreement for the purposes of a business carried on, or intended to be carried on, by the borrower if the agreement is a buy-to-let mortgage contract and—*
- (a) *(i) the borrower previously purchased, or is entering into the contract in order to finance the purchase by the borrower of, the land secured by the mortgage;*
 - (ii) at the time of the purchase the borrower intended that the land would be occupied as a dwelling on the basis of a rental agreement and would not at any time be occupied as a dwelling by the borrower or by a related person, or where the borrower has not yet purchased the land the borrower has such an intention at the time of entering into the contract; and*
 - (iii) where the borrower has purchased the land, since the time of the purchase the land has not at any time been occupied as a dwelling by the borrower or by a related person; or*
 - (b) *the borrower is the owner of land, other than the land secured by the mortgage, which is—*
 - (i) occupied as a dwelling on the basis of a rental agreement and is not occupied as a dwelling by the borrower or by a related person; or*
 - (ii) secured by a mortgage under a buy-to-let mortgage contract.*

Registration requirements

3. As explained in Chapter 2, there are detailed conditions in the legislation that unauthorised firms must meet to be registered by the FCA to carry out CBTL activity. These are:
- a. the firm carries on, or is seeking to carry on, consumer buy-to-let mortgage business;
 - b. the firm's head office, registered office or place of residence, as the case may be, is in the United Kingdom;
 - c. none of the individuals responsible for the management or operation of consumer buy-to-let mortgage business within the firm –
 - i. has been convicted of any offence involving fraud or dishonesty, or any indictable offence, and for this purpose “offence” includes any act or omission which would have been an offence if it had taken place in the United Kingdom; or
 - ii. is subject to a prohibition order;
 - d. if the firm is a partnership, an unincorporated association or a body corporate, the firm satisfies the FCA that any persons having a controlling interest over the firm are fit and

proper persons having regard to the need to ensure the sound and prudent conduct of the affairs of a consumer buy-to-let mortgage firm;

- e. the firm satisfies the FCA that –
 - i. where the firm is a body corporate, the directors;
 - ii. the persons responsible for the management of the firm; and
 - iii. the persons responsible for consumer buy-to-let mortgage business,are of good repute;
- f. if the firm is not a creditor but is a credit intermediary or provides advisory services for the purposes of this Part, the firm holds professional indemnity insurance covering its consumer buy-to-let mortgage business in the United Kingdom, or some other comparable guarantee against liability arising from professional negligence, of at least the minimum monetary amount specified in Commission Delegated Regulation (EU) No. 1125/2014 of 19 September 2014 of the European Parliament and of the Council with regard to regulatory technical standards on the minimum monetary amount of the professional indemnity insurance or comparable guarantee to be held by credit intermediaries, as such Regulation may be amended from time to time;
- g. the individuals responsible for the management or operation of consumer buy-to-let mortgage business within the firm possess an appropriate level of knowledge and competence in relation to consumer buy-to-let mortgage contracts; and
- h. the firm applies to the FCA in a manner that complies with the requirements of, and any requirements imposed under, Article 9 for entry on the register.

Conduct standards

- 4. The legislation sets out a series of conduct standards that firms will be required to follow where they lend, administer, arrange or offer advisory services in relation to CBTL mortgages. The government has used MCD Articles as a basis for these requirements, although some alterations have been made, for example to accommodate how buy-to-let mortgages are typically underwritten and to apply the provision of pre-contractual information in general terms, rather than require the form of the European Standardised Information Sheet (ESIS). CBTL firms will need to satisfy themselves that they meet these requirements.
- 5. Those conduct standards cover:
 - conduct of business obligations when providing CBTL products to consumers;
 - obligation to provide information free of charge to consumers;
 - knowledge and competence requirements for staff;
 - tying and bundling practices;
 - the provision of general information to customers;

- pre-contractual information;
- information requirements concerning credit intermediaries;
- adequate explanations;
- calculation of the annual percentage rate of charge;
- obligation to assess the creditworthiness of the borrower;
- property valuation;
- disclosure and verification of borrower information;
- standards for advisory services;
- foreign currency loans;
- variable rate credits;
- early repayment;
- flexible and reliable markets (record keeping);
- information concerning changes in the borrowing rate; and
- arrears and possessions.

Annex 2

Cost benefit analysis

1. The Financial Services and Markets Act (FSMA), as amended by the Financial Services Act (2012), requires us to publish a cost benefit analysis (CBA) of our proposed rules. Specifically, section 138I requires us to publish a CBA of proposed rules, defined as ‘an analysis of the costs, together with an analysis of the benefits’ that will arise if the proposed rules are made. It also requires us to include estimates of those costs and benefits, unless these cannot reasonably be estimated or it is not reasonably practicable to produce an estimate.
2. The government has published its own impact assessment of the effects of the CBTL appropriate framework alongside its final legislation that brings the regime into effect.¹¹ In this chapter we set out the CBA for two discretionary elements in how we implement that legislation: aggregate data reporting proposals and the application of complaints handling rules under DISP.

Size of CBTL sector

3. The government’s legislation will create a new distinction between buy-to-let activity involving consumers and customers acting by way of business. We do not currently collect data on CBTL mortgage lending, so it is difficult to accurately estimate the number of CBTL firms that will need to register with us and their volumes of CBTL business.
4. The government requested information from respondents to their recent MCD consultation. This suggested that CBTL lending would constitute around 11% of the buy-to-let market.¹² Around 160,000 buy-to-let mortgages are estimated to have been sold in 2013.¹³ This suggests that the current size of the CBTL market is approximately 17,600 mortgages a year.
5. According to MLAR data, around 100 authorised mortgage lenders advanced buy-to-let mortgages in the second quarter of 2014. More than half of these firms sold fewer than 10 buy-to-let mortgages over this period. As we expect only a small number of unauthorised lenders to carry out CBTL activity, we believe that no more than 100 lenders will register.
6. We believe that it is current market practice that lenders generally tend to accept intermediated buy-to-let business only through FCA-authorized mortgage brokers. There are currently around 5,000 authorised mortgage brokers. We do not hold data on the extent to which they are involved in the buy-to-let market. However, using regulated mortgage income provided through our Retail Mediation Activities Return as a proxy, we believe that somewhere in the region of up to 800 brokers could register with us to carry out CBTL mediation.¹⁴

11 HMT: Final stage impact assessment, <https://www.gov.uk/government/consultations/implementation-of-the-eu-mortgage-credit-directive>

12 ibid

13 Mintel: Buy-to-let Mortgages – UK, March 2014

14 Based on FCA data for intermediaries receiving more than £50,000 per annum in income from regulated mortgage activities.

Complaints and redress

7. Table 1 outlines the estimated benefits and costs during the first year following implementation of our complaints and redress proposals:

Table 1: Impacts of complaints and redress proposals

Benefits		
Estimated additional redress paid to consumers by CBTL lenders following the introduction of DISP	£15,000	A benefit for consumers which is a transfer from firms (aggregate)¹⁵
Additional welfare gain for customers who would otherwise lose out due to market failures such as information asymmetry		Unquantified benefit¹⁶
Benefits to consumers through improvements of industry standards in areas that lead to complaints.		Unquantified benefit¹⁷
Costs		
Estimated additional redress paid to consumers by CBTL lenders following the introduction of DISP	£15,000	A cost to firms which is a transfer to consumers (aggregate)
Additional ombudsman service case fees incurred	£4,000	Ongoing cost (aggregate)¹⁸
Industry administrative costs from processing increased number of complaints	£3,000	Ongoing cost (aggregate)¹⁹
Potential one-off compliance costs for firms to set up complaints handling process.	£20,000-67,000	One-off cost (aggregate)²⁰

8. The extent of costs incurred by individual firms will be influenced by each firm's lending and administration standards and how well complaints are handled, as well as the size and nature of specific instances of redress.
9. The transfers, benefits and costs outlined in the table above relate to the first year in which the CBTL regime comes into effect. The total population of CBTL loans will grow over the years

15 We have used the Treasury's estimate that CBTL mortgages will constitute 11% of the BTL market. The expected complaints rate is estimated to be 1% in line with the existing complaints rate in the home finance market. We further assume approximately 50% of complaints would be upheld (broadly in line with data for the home finance market) and around half of these are already compensated voluntarily by firms. Finally, we estimate an average redress paid of £350 which is based on FCA data for the average redress paid on upheld home finance complaints across July 2013 and June 2014.

16 We do not think it is practicable to quantify these benefits, because they relate to welfare outcomes for consumers which are yet to occur, in a market (CBTL) which has only just been defined by government and where there is a significant gap in data. To attempt a sophisticated quantification exercise would not be a proportionate use of FCA resources given the relatively small overall scale of impacts arising from these proposals.

17 *ibid*

18 Of the additional complaints following the introduction of DISP, we assume 25% of cases would be resolved through the ombudsman service. As firms incur no fee on the first 25 cases submitted to the ombudsman service, we assume that no fees become payable on 1/3rd of additional cases. Any chargeable cases to the ombudsman service incur a fee of £550.

19 The FSA previously estimated that the cost of handling a complaint in line with DISP rules ranges between £30 and £120. We have assumed an average cost per complaint of £75.

20 The range assumes 10-30% of the population of firms estimated above would need to spend on average 1 day of effort to understand and establish complaints handling processes which we cost at £250 per day.

resulting in a proportionate increase in aggregate benefits and costs. However, it is difficult to make any accurate estimate about how the market will develop. If the proposals lead to improved industry standards, ongoing costs could become marginal.

Aggregated data reporting

Benefits

10. Data is a key driver of our risk-based approach to supervision. Collecting aggregated data on the CBTL market will deliver significant benefits in enabling us to monitor the volumes and performance of BTL mortgages, track trends and outliers, as well as identify emerging areas of consumer detriment.²¹ This will enable us to target and deploy our supervisory resource more effectively.
11. Collecting aggregated data on a regular basis is an efficient method of monitoring financial services markets. A thematic review is another alternative method of obtaining the information we require. However, the relatively high costs, incurred by both us and firms, for what is a one-off exercise make this approach less viable and, without high-level data, difficult to scope.
12. We considered collecting more granular data from CBTL firms, but determined that, at this stage, it would introduce more significant costs when compared with aggregated data and with little discernible additional benefit give the expected size of the CBTL market.

Costs

13. We have gathered compliance costs from a sample of a dozen lenders. The median of lenders' estimated one-off compliance costs is in the region of £28,000. If 100 lenders register to carry out CBTL activity, this would place the aggregate one-off costs in the region of £2.75 million. However, individual lenders' assessments of these costs are subject to a high degree of variance, ranging between 'not significant' and £200,000. This variance is present across small, medium and large lenders. We believe that the higher estimates overstate the true additional costs of complying with our CBTL data proposals. CBTL lenders will incur systems costs in identifying CBTL mortgages to support their own compliance with government's legislation and, in all likelihood, generate their own management information. In addition, firms' estimates of complying with a new, relatively complex MLAR form for the purposes of first charge lending were comparatively lower, ranging between £1,500 and £28,000.²²
14. The median average of lenders' estimated annual ongoing costs is around £6,000. Scaled up to 100 firms, this would present ongoing costs of £600,000 to the industry. These estimates were subject to less variance when compared to one-off costs, ranging between 'not significant' and £30,000. As with one-off costs, we believe that the top end represent over-estimates.

FCA costs

15. We will use our normal processes to supervise CBTL firms, in line with the powers given to us by the government. In CP 14/20, we explained that we expect to incur one-off costs of between £3 million and £4.5 million, to implement both the MCD and our approach to second charge

²¹ We do not think it is reasonably practicable to quantify these benefits of aggregated data reporting. These are subsumed in the incremental benefits of the underlying frameworks through increasing compliance. The Treasury published an impact assessment of the framework for CBTL mortgages while we published a CBA of the MCD requirements in CP14/20.

²² The estimated one-off costs of delivering MLAR-L, as set out in CP13/2.

regulation. Our costs associated with implementing the government's CBTL regime will be subsumed within these costs.

16. Our ongoing costs to oversee the CBTL regime are yet to be fully scoped, but we would expect them to fall below the £400,000 quoted in CP14/20 to supervise our wider MCD regime.

Q6: Do you have any comments on our cost benefit analysis?

Annex 3

Compatibility statement

Compatibility with the FCA's General Duties

Introduction

1. When consulting on new rules, we are required by FSMA to include an explanation of why we believe making the proposed rules is compatible with our strategic objective, advances one or more of our operational objectives, and has regard to the statutory principles in section 3B FSMA. We are also required by section 138K(2) of FSMA to state our opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.

Compatibility with our statutory objectives

2. The legislation establishes the FCA's role in overseeing the non-FSMA appropriate framework for CBTL mortgages. Although we have been given powers to register, supervise and take action against firms, we do not have general rule-writing powers.
3. We consider these proposals to be compatible with our consumer protection objective, as well as our strategic objective for ensuring that the relevant markets work well, because we will be responsible for supervising and enforcing against firms CBTL activity.

Compatibility with the principles of good regulation

The need to use our resources in the most efficient and economic way

4. We have sought to be proportionate, avoiding additional regulatory costs and costs to industry, by applying bespoke high-level reporting and fees arrangements rather than our existing ones for authorised firms.

The principle that a burden or restriction which is imposed should be proportionate to the benefits

5. The proportionality of our approach is addressed in the cost benefit analysis at Annex 2. We believe our proposals for implementation will produce the least possible disruption for firms, while enabling us to use powers conferred on us by the legislation both effectively and proportionately.

The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term

6. We do not expect the proposals to have a material impact on growth in the UK. The proposals set out in this consultation affect the CBTL market, which government estimates to represent a small proportion of all buy-to-let lending.

The general principle that consumer should take responsibility for their decisions

7. Under the legislation, buy-to-let customers are given the option of declaring that they are acting by way of business in taking out a buy-to-let mortgage, to demonstrate that they fall outside of the scope of the CBTL legislation.

The responsibilities of the senior management of persons subject to requirements imposed by or under FSMA, including those affecting customers in relation to compliance with those requirements.

8. CBTL will be regulated under a non-FSMA regime. However, the government proposes that it should be a condition of registration that those in senior positions should meet certain requirements with regard to convictions, being fit and proper, being of good repute, and having an appropriate level of knowledge and competence.²³

The desirability where appropriate of the FCA exercising its functions in a way which recognises differences in the nature and objectives of the business it regulates.

9. Our approach is largely driven by the legislative provisions for CBTL. We are consulting on Handbook changes to give effect to those provisions, while recognising that volumes of CBTL business are expected to be low.

The desirability of publishing information relating to persons on whom requirements are imposed by or under FSMA

10. We have the power to publish information relating to investigations into firms and individuals. However, as set out in the Enforcement Guide, we will not normally make public the fact that we are or are not investigating a particular matter of any of our findings or conclusions of an investigation public except in the circumstances described in Chapter 6 of the Guide. The proposals contained in this consultation paper do not make any changes in this regard.

The principle that we should exercise our functions as transparently as possible

11. We are an open and transparent regulator. As we have developed our proposals, we have discussed them with industry and consumer representatives to explain our approach.

Legislative and Regulatory Reform Act 2006 (LRR)

12. We have had regard to the principles in the LRR and the Regulators' Compliance Code for the parts of the proposals that consist of general policies, principles or guidance. We have engaged with firms in this process, and consider that the proposals are proportionate and result in an appropriate level of consumer protection, when balanced with impacts on firms and on competition.

²³ Article 8 of the Mortgage Credit Directive Order 2015

Impact on mutual societies

13. We do not think that our proposals have a significantly different impact on mutual societies, but would welcome any comments or information respondents may have.

Equality Impact Assessment

14. As required under the Equality Act 2010, we have conducted an initial equality impact assessment (EIA) of our proposals to ensure that the equality and diversity implications are considered. This included an assessment of potential impacts arising from each of our policy proposals undertaken during our internal governance process.
15. The main outcomes of our initial assessment are that:
- the proposals in this paper do not result in direct discrimination for any of the groups with protected characteristics
 - although we do not currently hold any data on the gender, ethnicity, sexual orientation or faith of CBTL borrowers, we have not had any indication from consumer groups or other bodies that any group with protected characteristics may be affected by these proposals more than the general population
16. We would welcome any comments or information respondents may have on any equality and diversity issues arising from our proposals.

Annex 4

List of questions

- Q1:** Do you agree with our proposals for registering CBTL firms?
- Q2:** Do you agree with our proposals for collecting aggregate data from CBTL lenders?
- Q3:** Do you agree with our proposals for complaints and redress in relation to CBTL firms?
- Q4:** Do you agree with proposed changes to our Supervision, Enforcement Guidance, Decision Procedures and Penalties and Perimeter Guidance manuals?
- Q5:** Do you have any comments on our draft rules in order to implement the CBTL regime set out in legislation?
- Q6:** Do you have any comments on our cost benefit analysis?

Appendix 1

Draft Handbook text

**MORTGAGE CREDIT DIRECTIVE (CONSUMER BUY-TO-LET)
INSTRUMENT 2015**

Powers exercised by the Financial Ombudsman Service Limited

- A. The Financial Ombudsman Service Limited makes this instrument amending:
- (1) the rules relating to complaints handling procedures of the Financial Ombudsman Service;
 - (2) the rules, standard terms and guidance for Voluntary Jurisdiction participants;
- as set out in Annexes A and D of this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (a) section 227 (Voluntary jurisdiction);
 - (b) paragraph 8 (Guidance) of Schedule 17 (The Ombudsman Scheme);
 - (c) paragraph 14 (The scheme operator’s rules) of Schedule 17;
 - (d) paragraph 15 (Fees) of Schedule 17;
 - (e) paragraph 18 (Terms of reference to the scheme) of Schedule 17; and
 - (f) paragraph 22 (Consultation) of Schedule 17.
- B. The making (and amendment) of the rules, guidance and standard terms in Annexes A and D by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Conduct Authority.

Powers exercised by the Financial Conduct Authority

- C. The Financial Conduct Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137T (General supplementary powers);
 - (c) section 139A (Power of the FCA to give guidance);
 - (d) section 210 (Statements of policy) as applied by article 23(4) of the Mortgage Credit Directive Order XXXX/2015;
 - (e) section 226 (Compulsory jurisdiction) as applied by article 26(1) of the Mortgage Credit Directive Order XXXX/2015;
 - (f) section 395 (The FCA’s and PRA’s procedures) as applied by article 24(2) of the Mortgage Credit Directive Order XXXX/2015;
 - (g) paragraph 23 of Schedule 1ZA (The Financial Conduct Authority) as applied by article 25 of the Mortgage Credit Directive Order XXXX/2015; and
 - (h) paragraph 13 (FCA’s procedural rules) of Schedule 17 (The Ombudsman Scheme) as applied by article 26(1) of the Mortgage Credit Directive Order XXXX/2015;

- (2) the following articles of the Mortgage Credit Directive Order XXXX/2015
- (a) article 18 (Obligations of registered consumer buy-to-let mortgage firms);
 - (b) article 19(4) (Power to direct registered consumer buy-to-let mortgage firms to take appropriate action);
 - (c) article 21 (Monitoring and enforcement); and
 - (d) article 22 (Guidance); and
- (3) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.

- D. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.
- E. The Financial Conduct Authority consents to and approves the rules, guidance and standard terms made and amended by the Financial Ombudsman Service Limited.

Commencement

- F. This instrument comes into force on 21 March 2016.

Amendments to the Handbook

- G. The modules of the FCA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2) below:

(1)	(2)
Glossary of definitions	Annex A
Supervision manual (SUP)	Annex B
Decision Procedure and Penalties manual (DEPP)	Annex C
Dispute Resolution: Complaints sourcebook (DISP)	Annex D

Amendments to the material outside the Handbook

- H. The Enforcement Guide (EG) is amended in accordance with Annex E to this instrument.
- I. The Perimeter Guidance manual (PERG) is amended in accordance with Annex F to this instrument.

Notes

- J. In Annexes A and B to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- K. This instrument may be cited as the Mortgage Credit Directive (Consumer Buy-to-Let) Instrument 2015.

By order of the Board of the Financial Conduct Authority
[date]

By order of the Board of the Financial Ombudsman Service Ltd
[date]

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. This text is not underlined.

- buy-to-let credit agreement* a contract that:
- (a) at the time it is entered into:
 - (i) is one under which a lender provides credit to an individual or to trustees (the 'borrower'); and
 - (ii) provides for the obligation of the borrower to repay to be secured by a mortgage on land in the *EEA*; and
 - (iii) at least 40% of the land is used, or is intended to be used:
 - (A) (in the case of credit provided to an individual) as or in connection with a dwelling; or
 - (B) (in the case of credit provided to a trustee which is not an individual) as or in connection with a dwelling by an individual who is a beneficiary of the trust or a person who is:
 - (I) that beneficiary's spouse or civil partner; or
 - (II) a person (whether or not of the opposite sex) whose relationship with that beneficiary has the characteristics of the relationship between husband and wife; or
 - (III) that beneficiary's parent, brother, sister, child, grandparent or grandchild; and
 - (iv) provides that the land secured by the mortgage cannot at any time be occupied as a dwelling by the borrower or by a person who is:
 - (A) the borrower's spouse or civil partner; or
 - (B) a person (whether or not of the opposite sex) whose relationship with the borrower has the characteristics of the relationship between husband and wife; or
 - (C) the borrower's parent, brother, sister, child, grandparent or grandchild;

and is to be occupied as a dwelling on the basis of a rental agreement; or

- (b) is a *regulated credit agreement* which is an *article 3(1)(b) agreement* and provides that the land, or existing or projected building, to which it relates;
 - (i) cannot at any time be occupied as a dwelling by the borrower or a person who is:
 - (A) the borrower's spouse or civil partner; or
 - (B) a person (whether or not of the opposite sex) whose relationship with the borrower has the characteristics of the relationship between husband and wife; or
 - (C) the borrower's parent, brother, sister, child, grandparent or grandchild; and
 - (ii) is to be occupied as a dwelling on the basis of a rental agreement.

[Note: article 4(1) of the *MCD Order*]

CBTL adviser

a *person* who, in the course of their trade, business or profession, provides personal recommendations to a *CBTL consumer* in respect of one or more transactions relating to *CBTL credit agreements* otherwise than:

- (a) in an incidental manner in the course of a professional activity regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the making of those recommendations; or
- (b) in the context of managing existing debt as an insolvency practitioner where that activity is regulated by legal or regulatory provisions or as part of public or voluntary debt advisory services which do not operate on a commercial basis.

[Note: article 6 of the *MCD Order*]

CBTL arranger

a *person* who in the course of their trade, business or profession, for remuneration which may take a pecuniary form or any other agreed form of financial consideration:

- (a) presents or offers *CBTL credit agreements* to *CBTL consumers*; or
- (b) assists *CBTL consumers* by undertaking preparatory work or other pre-contractual administration in respect of *CBTL credit agreements* other than as in (a); or
- (c) concludes *CBTL credit agreements* with *CBTL consumers* on behalf of the *CBTL lender*;

and is not:

- (d) a *CBTL lender*; or
- (e) merely introducing, either directly or indirectly, a *CBTL consumer* to a *CBTL lender* or *CBTL arranger*.

[**Note:** article 5 of the *MCD Order*]

CBTL business

any of the following activities:

- (a) acting as a *CBTL lender*; or
- (b) acting as a *CBTL arranger*; or
- (c) acting as a *CBTL adviser*.

[**Note:** article 4(1) of the *MCD Order*]

CBTL consumer

(in relation to a *buy-to-let credit agreement*)

- (a) a *person* acting for purposes which are outside that *person's* trade, business or profession; or
- (b) a borrower under a *CBTL credit agreement*.

CBTL credit agreement

a *buy-to-let credit agreement* which is not entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by him. For this purpose examples of when a borrower is to be regarded as entering into a *buy-to-let credit agreement* for the purpose of a business carried on, or intended to be carried on by him are:

- (a) (i) the borrower previously purchased, or is entering into a *buy-to-let credit agreement* in order to finance the purchase by him of, the land to which the agreement relates;
- (ii) at the time of the purchase the borrower intended that the land would be occupied as a dwelling on the basis of a rental agreement and would not at any time be occupied as a dwelling by the borrower or by a person who is:
 - (A) the borrower's spouse or civil partner; or
 - (B) a person (whether or not of the opposite sex) whose relationship with the borrower has the characteristics of the relationship between husband and wife; or
 - (C) the borrower's parent, brother, sister, child, grandparent or grandchild

or where the borrower has not yet purchased the land the borrower has such an intention at the time of entering into the *buy-to-let credit agreement*; and
- (iii) where the borrower has purchased the land, since the time of the purchase the land has not at any time been occupied as a dwelling by the borrower or by a person

who is:

- (A) the borrower's spouse or civil partner; or
 - (B) a person (whether or not of the opposite sex) whose relationship with the borrower has the characteristics of the relationship between husband and wife; or
 - (C) the borrower's parent, brother, sister, child, grandparent or grandchild; or
- (b) the borrower is the owner of land, other than the land to which the *buy-to-let credit agreement* relates, which is:
- (i) occupied as a dwelling on the basis of a rental agreement and is not occupied as a dwelling by the borrower or by a person who is:
 - (A) the borrower's spouse or civil partner; or
 - (B) a person (whether or not of the opposite sex) whose relationship with the borrower has the characteristics of the relationship between husband and wife; or
 - (C) the borrower's parent, brother, sister, child, grandparent or grandchild; or
 - (ii) subject to a mortgage under a *buy-to-let credit agreement*.

[**Note:** articles 4(1) and 4(4) of the *MCD Order*]

- CBTL firm*
- (1) (other than in *DISP*) a *person* included by the *FCA* in the *Financial Services Register* pursuant to article 8(1) of the *MCD Order*.
 - (2) (in *DISP*) a *person* within (1) who is not a *firm*.

- CBTL lender*
- a *person* who:
- (a) enters into or promises to enter into a *CBTL credit agreement* under which the *person* is to provide credit; or
 - (b) administers a *CBTL credit agreement* in circumstances where doing so constitutes, or would if the *person* were not a *CBTL firm* constitute, *administering a regulated mortgage contract*; in the course of a trade, business or profession.

[**Note:** article 4(1) of the *MCD Order*]

MCD Order the Mortgage Credit Directive Order XXXX/2015.

Amend the following definitions as shown

Financial Services Register the public record, as required by section 347 of the *Act* (The public record), regulation 4 of the *Payment Services Regulations* (The

register of certain payment service providers) ~~and~~ regulation 4 of the *Electronic Money Regulations*, and article 8 of the MCD Order of every:

...

(ae) CBTL firm;

...

respondent

- (1) (in *DISP*, *FEES* 5 and *CREDS* 9) a *firm* (except an *AIFM* qualifier or a *UCITS* qualifier), *payment service provider*, *electronic money issuer*, CBTL firm, or *VJ participant* covered by the *Compulsory Jurisdiction*, *Consumer Credit Jurisdiction* or *Voluntary Jurisdiction* of the *Financial Ombudsman Service*.
- (2) (in *DISP* 2 and 3 and *FEES* 5) includes, as a result of section 226 of the *Act*:

...

(c) ... ; ~~and~~

(d) ... ; and

(e) a person who was formerly a CBTL firm in respect of a complaint about an act or omission which occurred at the time when it was a CBTL firm, provided that the compulsory jurisdiction rules were in force in relation to the activity in question.

...

senior personnel

- (1) those *persons* who effectively direct the business of the *firm* or CBTL firm, which could include a *firm's* or CBTL firm's *governing body* and other *persons* who effectively direct the business of the *firm* or CBTL firm.

...

Annex B

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

2 Information gathering by the FCA or PRA on its own initiative

2.1 Application and Purpose

Application

...

- 2.1.2A G CBTL firms are subject to a duty to deal with the FCA in an open and co-operative manner under article 18(1)(d) of the MCD Order. SUP 2.3 applies to CBTL firms in relation to complying with that duty as though:
- (1) a reference to firm included a reference to a CBTL firm;
 - (2) a reference to the regulatory system were a reference to the provisions of the MCD Order, rules, directions and guidance applicable to CBTL firms;
 - (3) a reference to Principle 11 were a reference to the duty imposed by article 18(1)(d) of the MCD Order;
 - (4) a reference to the appropriate regulator's functions under the Act were a reference to the FCA's functions under Part 3 of the MCD Order;
 - (5) a reference to SUP 12.5.3G were a reference to SUP 12.5.3AG;
 - (6) a reference to material outsourcing were a reference to outsourcing services of such importance that weakness, or failure, of the services would cast serious doubt upon the CBTL firm's continuing satisfaction of any condition for registration in article 8(2) or 8(3) of the MCD Order; and
 - (7) the rules were guidance in the same terms but with the word "must" replaced with the word "should".

...

Purpose

- 2.1.10 G The purpose of applying the provisions set out in SUP 2.1.2AG to CBTL firms is to amplify the duty of CBTL firms to deal with the FCA in an open and co-operative manner under article 18(1)(d) of the MCD Order.

...

5 Reports by skilled persons

5.1 Application and purpose

Application

...

5.1.1C D SUP 5.5.1R and SUP 5.5.5R apply to CBTL firms in relation to their CBTL business as if a reference to firm in these rules were a reference to a CBTL firm and a reference to section 166 of the Act were a reference to section 166 of the Act, as applied by article 23(2)(b) of the MCD Order.

5.1.1D G SUP 5.5.1R and SUP 5.5.5R apply to former CBTL firms in relation to their CBTL business as guidance and as if:

- (1) a reference to firm in those rules were a reference to a CBTL firm;
- (2) section 166 of the Act were a reference to section 166 of the Act as applied by article 23(2)(b) of the MCD Order; and
- (3) the word “must” were replaced by the word “should”.

5.1.1E G The guidance in SUP 5.2.1G, SUP 5.3, SUP 5.4 (except SUP 5.4.1AG), and SUP 5.5 (except SUP 5.5.10G and SUP 5.5.11G) applies to CBTL firms and former CBTL firms in relation to their CBTL business as if:

- (1) a reference to firm in that guidance included a CBTL firm;
- (2) a reference to a section of the Act were a reference to that section as applied by article 23 of the MCD Order if applicable; and
- (3) a reference to the FCA’s functions under the Act were a reference to the FCA’s functions under Part 3 of the MCD Order.

...

5.5 Duties of firms

...

Assisting the skilled person

...

5.5.11A G Section 166(7) of the Act (as applied by article 23(2)(b) of the MCD Order) imposes, in appropriate circumstances, a duty on CBTL firms to give the skilled person all such assistance as the skilled person may reasonably require. Where this duty applies to a CBTL firm, the FCA expects the CBTL firm to:

- (1) take reasonable steps to ensure that, when reasonably required by the skilled person, each of its appointed representatives waives any duty of confidentiality;
- (2) take reasonable steps to ensure that, when reasonably required by the skilled person, each of its appointed representatives complies with any duty under section 166(7) applicable to it, or provides assistance to the skilled person as though that duty applied directly to it;
- (3) allow the skilled person access at all reasonable business hours to the CBTL firm's accounting and other records in whatever form;
- (4) provide such information and explanations as the skilled person reasonably considers necessary or desirable for the performance of his duties; and
- (5) permit the skilled person to obtain such information directly from the CBTL firm's auditor as he reasonably considers necessary or desirable for the proper performance of his duties.

...

10A FCA Approved Persons

10A.1 Application

...

Appointed representatives

- 10A.1.15 R The descriptions of the following *FCA controlled functions* apply to an *appointed representative of a firm*, except in relation to CBTL business or an introducer appointed representative, as they apply to an *FCA-authorized person*:

...

...

10A.4 Specification of functions

...

- 10A.4.2 R Part 1 of the table of *FCA controlled functions* applies in relation to an *FCA-authorized person*. It also applies in relation to an *appointed representative* for the purposes of SUP 10A.1.15R (Appointed representatives) whether its *principal* is an *FCA-authorized person* or a *PRA-authorized person*, except in relation to CBTL business). ...

...

12 Appointed representatives

12.1 Application and purpose

12.1.1 R ...

(1B) This chapter applies to a *CBTL firm* other than a *CBTL lender* which is considering appointing, has decided to appoint or has appointed an *appointed representative* in relation to *CBTL business* as it does to a *firm*.

...

...

12.3 What responsibility does a firm have for its appointed representatives or EEA tied agent?

Responsibility for appointed representatives

12.3.1 G In determining whether a *firm* has complied with any provision in or under the *Act* such as any *Principle* or other *rule*, or with any provision in Part 3 of the *MCD Order*, anything that an *appointed representative* has done or omitted to do as respects the business for which the *firm* has accepted responsibility will be treated as having been done or omitted to be done by the *firm* (section 39(4) of the *Act* and article 17 of the *MCD Order*).

...

12.4 What must a firm do when it appoints an appointed representative or an EEA tied agent?

The permission that the firm needs

...

12.4.1A G The effect of sections 20 (Authorised persons acting without permission) and 39(4) (Exemption of appointed representatives) of the *Act* is that the *regulated activities* covered by an *appointed representative's* appointment need to:

...

(2) be excluded from being *regulated activities* when carried on by the *principal*, for example because they fall within article 28 of the *Regulated Activities Order* (Arranging transactions to which the arranger is a party) or because they constitute *CBTL business* and the *principal* is a *CBTL firm*.

12.4.1B G In relation to *CBTL business* only a *CBTL firm* which is a *firm* can appoint an *appointed representative*.

...

12.5 Contracts: required terms

Required contract terms for all appointed representatives

...

12.5.3 G ~~A~~ (Subject to SUP 12.5.3AG) a *firm* should satisfy itself that the terms of the contract with its *appointed representative* (including an *introducer appointed representative*):

...

12.5.3A G To the extent that the appointment of the *appointed representative* includes *CBTL business*, a *firm* should satisfy itself that the terms of the contract with its *appointed representative*:

(1) are designed to enable the *firm* to comply properly with any direction issued or imposed under article 19 of the *MCD Order*; and

(2) require the *appointed representative* to deal with the *FCA* in an open and co-operative manner and give access to its premises, as set out in SUP 2.3.4G and SUP 2.3.5AG(2) as applied by SUP 2.1.2AG.

...

12.5.5 R A *firm* must ensure that its written contract with each of its *appointed representatives*:

...

(2) requires the *appointed representative* to comply, and to ensure that any *persons* who provide services to the *appointed representative* under a contract for service comply, with the relevant requirements in or under the *Act* (including the *rules*) that apply to the activities which it carries on as *appointed representative* of the *firm*; ~~and~~

(2A) (where the scope of appointment of the *appointed representative* includes *CBTL business*) requires the *appointed representative* to comply, and to ensure that any *persons* who provide services to the *appointed representative* under a contract for service comply, with the requirements of and arising under Part 3 of the *MCD Order*; and

...

...

12.6 Continuing obligations of firms with appointed representatives or EEA tied agents

...

Obligations of firms under the approved persons regime

12.6.8 G ...

(3) The approved persons regime does not apply in relation to CBTL business carried on by CBTL firms.

...

Obligations of firms under the training and competence rules

...

12.6.11- R A CBTL firm must take reasonable care to ensure that:
A

(1) individuals who are its appointed representatives; and

(2) individuals who are employed or appointed by appointed representatives (whether under a contract of service or for services);

who act in connection with the CBTL business of the appointed representative for which the CBTL firm has accepted responsibility satisfy the knowledge and competence requirements set out in paragraph 3 of Schedule 2 to the MCD Order.

...

12.9 Record keeping

...

12.9.3 G The firm should also satisfy itself that:

(1) the appointed representative is making and retaining records in accordance with the relevant record keeping rules in the Handbook or, in relation to CBTL business, the record keeping requirements in or under Part 3 of the MCD Order, if these records are not maintained by the firm;

...

...

15 Notifications to the FCA or PRA**15.1 Application**

Who?

...

15.1.3A G The guidance in SUP 15.11 applies to all CBTL firms whether or not they are also firms.

...

After SUP 15.10 insert the following new section. The text is new and is not underlined.

15.11 Notification by CBTL firms

Application and purpose

15.11.1 G This section sets out guidance for *CBTL firms* to assist them in complying with their obligation to notify the *FCA* immediately if they cease to satisfy any condition for registration in article 8(2) or 8(3) of the *MCD Order*.

[Note: Article 12 of the *MCD Order*]

15.11.2 G The nature of a *CBTL firm's* obligation under article 12 of the *MCD Order* will depend on whether the *CBTL firm* has a *Part 4A permission* to carry on one or more *regulated activities*.

CBTL firms which have Part 4A permission

15.11.3 G The circumstances in which a *CBTL firm* which has a *Part 4A permission* should notify the *FCA* include but are not limited to when:

- (1) it ceases to carry on *CBTL business* and does not propose to resume carrying on *CBTL business* in the immediate future. This does not include circumstances where the *CBTL firm* temporarily withdraws its products from the market or is preparing to launch fresh products; or
- (2) it applies to cancel its *Part 4A permission*; or
- (3) it applies to vary its *Part 4A permission* so that once the variation takes effect it will cease to hold any *Part 4A permission*; or
- (4) it receives a *final notice* to cancel its *Part 4A permission*; or
- (5) it receives a second *supervisory notice* to vary its *Part 4A permission* so that once the variation takes effect it will cease to hold any *Part 4A permission*.

CBTL firms which do not have a Part 4A permission

15.11.4 G The circumstances in which a *CBTL firm* which has a *Part 4A permission* should notify the *FCA* include but are not limited to when:

- (1) it ceases to carry on *CBTL business* and does not propose to resume carrying on *CBTL business* in the immediate future; this does not include circumstances where the *CBTL firm* temporarily withdraws its products from the market or is preparing to launch fresh products;

or

- (2) it changes its registered office or place of residence as the case may be so that it is no longer in the *United Kingdom*; or
- (3) any individual responsible for the management or operation of the *CBTL business* within the *CBTL firm*:
 - (a) is convicted of any offence involving fraud or dishonesty or any indictable offence, including any act or omission which would have been an offence if it had taken place in the *United Kingdom*; or
 - (b) becomes subject to a prohibition order; or
- (4) it takes on an individual to be responsible for the management or operation of the *CBTL business* within the *CBTL firm* who has been:
 - (a) convicted of any offence involving fraud or dishonesty or any indictable offence, including any act or omission which would have been an offence if it had taken place in the *United Kingdom*; or
 - (b) is subject to a prohibition order; or
- (5) (if the *CBTL firm* is an *undertaking*) any person:
 - (a) who:
 - (i) holds 10% or more of the shares in the *CBTL firm* or in a parent undertaking of the *CBTL firm*; or
 - (ii) holds 10% or more of the voting power in the *CBTL firm* or in a parent undertaking of the *CBTL firm*; or
 - (iii) holds shares or voting power in the *CBTL firm* or in a parent undertaking of the *CBTL firm* as a result of which he is able to exercise significant influence over the management of the *CBTL firm*;
 - (b) ceases to be a fit and proper person having regard to the need to ensure the sound and prudent conduct of the affairs of the *CBTL firm*;
- (6) (if the *CBTL firm* is an *undertaking*) any person who is not a fit and proper person, having regard to the need to ensure the sound and prudent conduct of the affairs of the *CBTL firm*, acquires an interest such that he:
 - (a) holds 10% or more of the shares in the *CBTL firm* or in a parent undertaking of the *CBTL firm*; or

- (b) holds 10% or more of the voting power in the *CBTL firm* or in a *parent undertaking* of the *CBTL firm*; or
 - (c) holds shares or voting power in the *CBTL firm* or in a *parent undertaking* of the *CBTL firm* as a result of which he is able to exercise significant influence over the management of the *CBTL firm*; or
- (7) any of the following persons cease to be of good repute:
- (a) a person responsible for the management of the *CBTL firm*; or
 - (b) a person responsible for the *CBTL firm's CBTL business*; or
 - (c) a director of the *CBTL firm* (if the *CBTL firm* is a *body corporate*); or
- (8) a person who is not of good repute becomes:
- (a) responsible for the management of the *CBTL firm*; or
 - (b) responsible for the *CBTL firm's CBTL business*; or
 - (c) a director of the *CBTL firm* (if the *CBTL firm* is a *body corporate*); or
- (9) (if the *CBTL firm* is a *CBTL arranger* or a *CBTL adviser*) it ceases to hold professional indemnity insurance as described in article 8(f) of the *MCD Order*; or
- (10) the individuals responsible for the management or operation of the *CBTL business* of the *CBTL firm* lack an appropriate level of knowledge or competence in relation to *CBTL credit agreements*.

Method, form and timing of notifications

- 15.11.5 G Any notification given by a *CBTL firm* under article 12 of the *MCD Order* should be:
- (1) in writing;
 - (2) in English;
 - (3) given to or addressed for the attention of the *CBTL firm's* usual supervisory contact at the *FCA* (where the *CBTL firm* does not have an identified supervisory contact this will be the *FCA's* Contact Centre);
 - (4) delivered to the *FCA* by one of the methods in *SUP 15.7.5AR* to the appropriate address set out in *SUP 15.7.6AG*; and

- (5) given by a person who has full knowledge of the facts giving rise to the notification and who is responsible for the management of the *CBTL firm* or the *CBTL firm's CBTL business*.
- 15.11.6 G A notification given under article 12 of the *MCD Order* should contain at least the following information:
- (1) the *CBTL firm's name* and reference number;
 - (2) the name and telephone, postal and email (where available) contact details of the person responsible for making the notification;
 - (3) a statement that the notification is given under article 12 of the *MCD Order*;
 - (4) a statement setting out the specific condition of article 8 of the *MCD Order* that the notification relates to;
 - (5) full details of the facts giving rise to the notification, including in particular when the relevant events occurred and when the *CBTL firm* became aware of them (if different); and
 - (6) full details of any steps taken or proposed to be taken by the *CBTL firm* to address the issues giving rise to the obligation to make the notification, including a proposed timeline for the steps, if applicable.
- 15.11.7 G The *MCD Order* requires notification to be given immediately. The *FCA* expects *CBTL firms* to act with all due urgency in notifying it of any relevant event, and it is unlikely that the *FCA* will regard delay in excess of 5 working days as complying with the *CBTL firm's* obligations.

Amend the following as shown.

16 Reporting requirements

16.1 Application

...

16.1.1D D *SUP 16.21 applies to a CBTL firm.*

...

16.3 General provisions on reporting

...

Structure of the chapter

- 16.3.2 G This chapter has been split into the following sections, covering:
- ...
- (15) ... ; and
- (16) reporting under the MCD Order for CBTL firms (SUP 16.21).

...

After SUP 16.20 insert the following new section. The text is new and is not underlined.

16.21 Reporting under the MCD Order for CBTL firms

Application

- 16.21.1 D This section applies to a *CBTL firm* that enters into or promises to enter into a *CBTL credit agreement* as lender, or a *CBTL firm* in which the rights and obligations of the lender under a *CBTL credit agreement* are vested.

Purpose

- 16.21.2 G The purpose of this section is to direct *CBTL firms* in relation to:
- (1) the information on their *CBTL business* and their compliance with requirements imposed by Schedule 2 to the *MCD Order* that they must provide to the *FCA*; and
 - (2) the time at which, and the manner and form in which, they must provide that information.

[**Note:** article 18(1)(c) of the *MCD Order*]

- 16.21.3 G The purpose of this section is also to make provision for *CBTL firms* in relation to the failure to submit reports.

Reporting requirement

- 16.21.4 D A *CBTL firm* must submit a duly completed consumer buy-to-let return to the *FCA*. The return must be submitted:
- (1) in the format set out in *SUP 16 Annex 39AD*; guidance notes for the completion of the return are set out in *SUP 16 Annex 39BG*;
 - (2) quarterly in respect of a quarterly reporting period calculated from the *CBTL firm's accounting reference date*;
 - (3) within 30 days following the end of the reporting period; and
 - (4) by electronic means made available by the *FCA*.
- 16.21.5 D *SUP 16.3.11R* (Complete reporting) and *SUP 16.3.13R* (Timely reporting)

apply as directions to a *CBTL firm* in relation to *CBTL business* as if a reference to *firm* in these provisions were a reference to a *CBTL firm*.

- 16.21.6 R *SUP 16.3.14R* (Failure to submit reports) applies to a *CBTL firm* in relation to *CBTL business* as if a reference to *firm* in that *rule* were a reference to a *CBTL firm*.
- 16.21.7 D (1) A *CBTL firm* may appoint another *person* to provide a report on the *CBTL firm's* behalf if the *CBTL firm* has informed the *FCA* of that appointment in writing.
- (2) Where (1) applies, the *CBTL firm* must ensure that the report complies with the requirements of *SUP 16.20*.

...

After SUP 16 Annex 38B insert the following new annexes. The text is new and is not underlined.

16 Annex 39AD Consumer buy-to-let return

CONSUMER BUY-TO-LET (CBTL) MORTGAGE AGGREGATED DATA RETURN

Lending

	Number	Value (£000)
New CBTL advances in the reporting period	_____	_____
Outstanding CBTL loans	_____	_____

Arrears, repossessions and receivers

	Number	Value (£000)
CBTL loans in arrears of >1.5% of outstanding balance	_____	_____
	In the reporting period	In the reporting year to date
CBTL repossessions	_____	_____
Number of Receiver appointments on CBTL	_____	_____
Number of CBTL properties under the control of a Receiver	_____	_____

Complaints

	In the reporting period	In the reporting year to date
Total CBTL complaints outstanding at reporting period start date	_____	_____
CBTL complaints received	_____	_____
CBTL complaints closed	_____	_____
CBTL complaints upheld by firm	_____	_____
Total redress paid on CBTL complaints (£)	_____	_____

**16 Annex 39BG Guidance notes for completion of consumer buy-to-let return in SUP
16 Annex 39AD**

Outline guidance for firms completing the aggregated ‘consumer buy-to-let’ (CBTL) mortgage return

We expect firms registered by us to carry out CBTL lending to report aggregated data to us on a quarterly basis, with reports scheduled in line with each firm’s Annual Reporting Date. We expect firms to report loans, and aspects relating to those loans, that meet the definition of a “consumer buy-to-let mortgage contract”, as defined in article 4 of the Mortgage Credit Directive Order (*CBTL credit agreement* in the Handbook).

Further guidance is provided, below, on what should be reported under each category.

1 Lending

(a) New CBTL advances in the reporting period

This should include new loans for house purchase and remortgage, where the mortgage completes in the reporting period.

(b) Outstanding CBTL loans

This is the amount of total debt at the reporting date, and should comprise the total amount outstanding (after deducting any write-offs but without deduction for any provisions) in respect of:

- (i) the principal of the advance (including any further advances made);
- (ii) interest accrued on the advance (but only up to the reporting date), including any interest suspended; and
- (iii) any other sum which the borrower is obliged to pay the firm and which is due from the borrower, e.g. fees, fines, administration charges, default interest and insurance premiums;

2 Arrears, repossessions and receivers

(a) CBTL loans in arrears of >1.5% of outstanding balance

At the reporting date, the amount of arrears is the difference between:

- (i) the accumulated total amounts of (monthly or other periodic) payments due to be received from the borrower; and
- (ii) the accumulated total amount of payments actually made by the borrower.

Only amounts which are contractually due at the reporting date should be included in 2(a)(i) above. That is:

- (i) include accrued interest only up to the reporting date but not beyond;

- (ii) and only include a proportion of any annual insurance premium if the firm permits such amounts to be paid in periodic instalments. However, if the terms of the loan or the lender's practice are such as to permit insurance premiums to be added to the loan principal then do not treat such amounts as contractually due;
- (iii) similarly, where 'any other sum' has been added to the loan, only include such proportions as are contractually due (e.g. if it is the practice in particular circumstances to add the sum/charge to the loan and require repayment over the residual term of the loan);
- (iv) in assessing 'payments due' when a borrower has a flexible loan, it is important to apply the contractual terms of the loan: for example, payment holidays which satisfy the terms of the loan should not be treated as giving rise to an arrears position.

Where a firm makes a temporary 'concession' to a borrower (i.e. an agreement with the borrower whereby monthly payments are either suspended or less than they would be on a fully commercial basis) for a period, the amounts included in 2(a)(i) are those contractually due (and at commercial rates of interest). Hence the borrower will continue to be in arrears and the level of arrears will in fact continue to increase until such time as he is able fully to service the debt outstanding.

Where the terms of the loan do not require payment of interest (or capital) until a stated date or until redemption or until certain conditions are triggered, as for example in the case of certain building finance loans, then the loan is not in arrears until such time as contractual repayments fall due.

(b) CBTL repossessions

This should include each property secured by a CBTL mortgage taken into possession (through any method e.g. voluntary surrender, court order etc). This should not include where a property is under the control of a receiver, but should include where a receiver has exercised power of sale.

(c) Number of Receiver appointments on CBTL

This should include where, within the reporting period, a Receiver has been appointed on a property secured by a CBTL mortgage, including those where the property is no longer under control of a Receiver.

(d) Number of CBTL properties under the control of a Receiver

This should include where, at the end of the reporting period, the Receiver is managing/overseeing a property secured by a CBTL mortgage.

3 Complaints

A complaint should be reported where the complaint concerns CBTL activity. Firms already required to complete the complaints return set out in *DISP 1 Annex 1* should continue to do so alongside the CBTL aggregated return.

Annex C

Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

2 Annex 1 G Warning notices and decision notices under the Act and certain other enactments

Insert the following new table at the end of this annex.

<u>The Mortgage Credit Directive Order 2015</u>	Description	Handbook reference	Decision maker
<u>Article 11(1)</u>	<u>when the FCA is proposing to refuse an application for entry on the register or variation of an existing entry on the register</u>		<u>Executive procedures</u>
<u>Article 11(2)</u>	<u>when the FCA is deciding to refuse an application for entry on the register or variation of an existing entry on the register</u>		<u>Executive procedures where no representations are made in response to a warning notice, otherwise by the RDC</u>
<u>Articles 14(1), 14(2), 16(3) and 16(4)</u>	<u>when the FCA is proposing or deciding to revoke or suspend the registration of a registered CBTL firm other than at the firm's request or with the firm's consent*</u>		<u>RDC</u>
<u>Article 23(4)</u>	<u>when the FCA is proposing or deciding to publish a statement (under section 205 of the Act) or impose a financial penalty (under section 206 of the Act)*</u>		<u>RDC</u>

2 Annex 2G Supervisory notices

Insert the following new table at the end of this annex.

<u>The Mortgage Credit Directive Order 2015</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
Article 19(6)	<u>when the FCA is exercising its own-initiative power to impose a direction</u>		<u>RDC or executive procedures</u> <u>See DEPP 2.5.7G and DEPP 2.5.7AG</u>

Amend the following as shown.

Schedule 3 Fees and other required payments

...

Sch 3.2 G

The <i>FCA</i> 's power to impose financial penalties is contained in:	

	the <i>Immigration Regulations</i>
	<u>the MCD Order</u>

Schedule 4 Powers Exercised

...

Sch 4.1 G

The following powers and related provisions in or under the <i>Act</i> have been exercised by the <i>FCA</i> to make the statements of policy in <i>DEPP</i> :	
	...
	Section 210(1) (Statements of policy) (including as applied by regulation 86(6) of the <i>Payment Services Regulations</i> , and by paragraph 3 of the Schedule to the <i>Cross-Border Payments in Euro Regulations</i> <u>and by article 23(4) of the MCD Order</u>)
	...
	Section 395 (The Authority's procedures) (including as applied by paragraph 7 of

	Schedule 5 to the <i>Payment Services Regulations</i> , and by paragraph 5 of the Schedule to the <i>Cross-Border Payments in Euro Regulations</i> <u>and by article 24(2) of the <i>MCD Order</i></u>
--	---

Annex D

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

INTRO 1 Introduction

This part of the *FCA Handbook* sets out how *complaints* are to be dealt with by *respondents* (*firms*, *payment service providers*, *electronic money issuers*, *CBTL firms* and *VJ participants*) and the *Financial Ombudsman Service*.

...

The powers to make rules (or set *standard terms*) relating to *firms*, *payment service providers*, *electronic money issuers*, *CBTL firms* and *VJ participants* derive from various legislative provisions; but the rules (and *standard terms*) have been co-ordinated to ensure that they are identical, wherever possible.

...

...

1 Treating complainants fairly

1.1 Purpose and application

...

1.1.2 G Details of how this chapter applies to each type of *respondent* are set out below. For this purpose, *respondents* include:

- (1) *persons* carrying on *regulated activities* (*firms*), providing *payment services* (*payment service providers*), ~~or~~ providing *electronic money issuance services* (*electronic money issuers*) or carrying on *CBTL business* (*CBTL firms*) and which are covered by the *Compulsory Jurisdiction*; and

...

...

Application to CBTL firms

1.1.10G R This chapter (except the *complaints record rule*, the *complaints reporting rules* and the *complaints data publication rules*) applies to *CBTL firms* in respect of *complaints* from *eligible complaints* concerning activities carried on from an establishment maintained in the *United Kingdom*.

1.1.10H G (1) In this sourcebook, the term *CBTL firm* does not include a *firm*. A *firm* carrying on *CBTL business* is covered by this sourcebook as a

firm.

- (2) CBTL firms are reminded of their obligation to retain information relevant to demonstrating the firm’s compliance or non-compliance with the requirements of Schedule 2 of the MCD Order.

...

1.2 Consumer awareness rules

Publishing and providing summary details

- 1.2.1 R To aid consumer awareness of the protections offered by the provisions of this chapter, *respondents* must:

...

- (2) refer *eligible complainants* to the availability of this information:

...

- (aa) in relation to CBTL arrangers, in the information on registering complaints internally and out-of-court complaint and redress procedures to be provided under article 7(1)(h) of Schedule 2 to the MCD Order; or

...

...

1.3 Complaints handling rules

...

- 1.3.3B G The processes that a *firm or CBTL firm* should have in place in order to comply with *DISP* 1.3.3R may include, taking into account the nature, scale and complexity of the *firm's or CBTL firm's* business including, in particular, the number of *complaints* the *firm or CBTL firm* receives:

...

...

1 Annex 2G Application of DISP 1 to type of respondent/complaint

...

Type of respondent/complaint	DISP 1.2 Consumer awareness rules	DISP 1.3 Complaints handling rules	DISP 1.4-1.8 Complaints resolution rules	DISP 1.9 Complaints record rule	DISP 1.10 Complaints reporting rules	DISP 1.10A Complaints data publication
------------------------------	-----------------------------------	------------------------------------	--	---------------------------------	--------------------------------------	--

						rules
an <i>incoming EEA AIFM</i> , for <i>complaints</i> concerning <i>AIFM management functions</i> carried on for an <i>authorised AIF</i> under the freedom to provide <i>cross-border services</i>	...					
<u>CBTL firm in relation to complaints concerning CBTL business</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>	<u>Applies for eligible complainants</u>	<u>Does not apply</u>	<u>Does not apply</u>	<u>Does not apply</u>

2 Jurisdiction of the Financial Ombudsman Service

2.1 Purpose, interpretation and application

Purpose

2.1.1 G The purpose of this chapter is to set out *rules* and guidance on the scope of the *Compulsory Jurisdiction* and the *Voluntary Jurisdiction*, which are the *Financial Ombudsman Service's* two jurisdictions:

- (1) the *Compulsory Jurisdiction* is not restricted to *regulated activities*, *payment services*, ~~and~~ issuance of *electronic money*; and *CBTL business*, and covers:

...

...

...

2.3 To which activities does the Compulsory Jurisdiction apply?

Activities by firms

2.3.1 R The *Ombudsman* can consider a *complaint* under the *Compulsory Jurisdiction* if it relates to an act or omission by a *firm* in carrying on one or more of the following activities:

...

(1B) CBTL business;

...

...

Activities by CBTL firms

2.3.2B R The Ombudsman can consider a complaint under the Compulsory
A Jurisdiction if it relates to an act or omission by a CBTL firm in carrying on
CBTL business or any ancillary activities, including advice, carried on by
the CBTL firm in connection with its CBTL business.

...

General

2.3.3 G *Complaints about acts or omissions include those in respect of activities for*
which the firm, payment service provider, ~~or~~ electronic money issuer or
CBTL firm is responsible (including business of any appointed
representative or agent for which the firm, payment institution or electronic
money institution has accepted responsibility).

...

2.5 To which activities does the Voluntary Jurisdiction apply?

2.5.1 R The Ombudsman can consider a complaint under the *Voluntary Jurisdiction*
if:

...

(2) it relates to an act or omission by a *VJ participant* in carrying on one
or more of the following activities

...

(c) activities which (at ~~22 July 2014~~ 21 March 2016) would be
covered by the *Compulsory Jurisdiction*, if they were carried
on from an establishment in the *United Kingdom* (these
activities are listed in *DISP 2 Annex 1G*);

...

...

2.6 What is the territorial scope of the relevant jurisdiction?

Compulsory Jurisdiction

2.6.1 R (1) The *Compulsory Jurisdiction* covers *complaints* about the activities
of a *firm* (including its *appointed representatives*), of a *payment*

service provider (including agents of a payment institution), ~~or~~ of an electronic money issuer (including agents of an electronic money institution) or of a CBTL firm carried on from an establishment in the United Kingdom.

...

...

2.7 Is the complainant eligible?

...

Eligible complainants

...

2.7.3 R An *eligible complainant* must be a *person* that is:

...

- (3) a charity which has an annual income of less than £1 million at the time the complainant refers the *complaint* to the *respondent*; ~~or~~
- (4) a trustee of a trust which has a net asset value of less than £1 million at the time the complainant refers the *complaint* to the *respondent*; or
- (5) (in relation to *CBTL business*) a *CBTL consumer*.

...

Exceptions

2.7.9 R The following are not *eligible complainants*:

- (1) (in all jurisdictions) a *firm, payment service provider, electronic money issuer, CBTL firm or VJ participant* whose *complaint* relates in any way to an activity which:

...

- (ab) the *firm, payments service provider, ~~or~~ electronic money issuer or CBTL firm* itself is entitled to carry on under the *Payment Services Regulations, ~~or~~ the Electronic Money Regulations or the MCD Order*; or

...

...

...

2 Annex 1G Regulated Activities for the Voluntary Jurisdiction at ~~22 July 2014~~ 21 March 2016

The activities which were covered by the *Compulsory Jurisdiction* (at ~~4 April 2014~~ 21 March 2016) were:

(1) for *firms*:

...

(h) *CBTL business*;

...

(4) for *CBTL firms*: *CBTL business* or any ancillary activities, including advice, carried on by the *CBTL firm* in connection with it.

...

The activities which (at ~~22 July 2014~~ 21 March 2016) were *regulated activities* were, in accordance with section 22 of the *Act* (the classes of activity and categories of investment), any of the following activities specified in Part II of the *Regulated Activities Order*.

...

Annex E**Amendments to the Enforcement Guide (EG)**

In this Annex, all the text is new and not underlined.

Insert the following new provisions after EG 19.169.

The Mortgage Credit Directive Order 2015

- 19.170 The Mortgage Credit Directive (MCD) allows for an exemption not to apply the MCD to buy-to-let lending if there is in place an appropriate framework for the regulation of these mortgages. The Mortgage Credit Directive Order 2015 (MCDO) is the vehicle through which the framework for “consumer buy-to-let” (CBTL) mortgages has been established in order to comply with the MCD.
- 19.171 The MCDO requires that a firm acting as a lender, intermediary or carrying out advisory services in relation to CBTL from 21 March 2016 must be registered by the *FCA* to do so. It provides for the *FCA* to determine applications to be registered, as well as powers to suspend or revoke registration.
- 19.172 It also imposes obligations on registered firms to comply with conduct requirements set out in the Schedule to the MCDO, retain relevant information and to deal with the *FCA* in an open and co-operative manner. The *FCA* also has the power to give directions to a registered firm to secure compliance with the requirements set out in the Schedule. In addition, the *FCA* has investigation and sanctioning powers in relation to the framework.
- 19.173 The *FCA's* approach to taking enforcement action under the MCDO will mirror its general approach to enforcing the *Act*, as set out in *EG 2*. It will seek to exercise its enforcement powers in a manner that is transparent, proportionate and responsive to the issue and consistent with its publicly stated policies. It will also seek to ensure fair treatment when exercising its enforcement powers. Finally, it will aim to change the behaviour of the person who is the subject of its action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance and, where appropriate, to remedy the harm caused by the non-compliance.
- 19.174 The MCDO, for the most part, applies or mirrors the *FCA's* investigative and sanctioning powers under the *Act*. The *FCA* has adopted procedures and policies for the use of those powers that are akin to those it has under the *Act*. Key features of the *FCA's* approach are described below.

Information gathering and investigation powers

- 19.175 Article 23 of the MCDO applies many of the provisions of the *Act* in relation to the *FCA's* investigation and information-gathering powers in respect of a registered firm. The effect of this is to apply the same procedures under the *Act*

for appointing investigators and requiring information when investigating contraventions of the MCDO.

- 19.176 For example, the *FCA* will notify the subject of the investigation that it has appointed investigators to carry out an investigation under the MCDO and the reasons for the appointment, unless notification is likely to result in the investigation being frustrated. In most cases, the *FCA* expects to carry out a scoping visit early on in the enforcement process. The *FCA's* policy in regulatory investigations under the MCDO is to use powers to compel information, in the same way as it would in the course of an investigation under the *Act*.

Decision making under the MCDO

- 19.177 The *RDC* is the *FCA's* decision maker for some decisions which require *warning notices* or *decision notices* to be given under the MCDO as set out in *DEPP 2 Annex 1G*. The *RDC* will make its decisions following the procedure set out in *DEPP 3.2* or, where appropriate, *DEPP 3.3*, and *DEPP 3.4* applies for urgent notices under article 16 (1)(a).

- 19.178 For decisions made by executive procedures, the procedure to be followed will be those described in *DEPP 4*.

- 19.179 Article 18(3) applies sections 393 and 394 of the *Act* to *warning notices* and *decision notices* given under the MCDO and so require the *FCA* to give third party rights and to give access to material as set out under the *Act*. Article 24(1) applies the procedural provisions of Part 9 of the *Act*, in respect of matters that can be referred to the *Tribunal*, and article 24(2) applies Part 26 of the *Act* to *warning* and *decision notices* given under the MCDO.

Public censures, imposition of penalties and the impositions of suspensions under the MCDO

- 19.180 When determining whether to take action to impose a penalty or to issue a public censure under the MCDO, the *FCA's* policy includes having regard to the relevant factors in *DEPP 6.2* and *DEPP 6.4*. When determining the level of financial penalty, the *FCA's* policy includes having regard to the relevant principles and factors in *DEPP 6.5*, *DEPP 6.5A*, *DEPP 6.5D* and *DEPP 6.7*.

- 19.181 As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving breaches of the MCDO to assist it to exercise its functions. *DEPP 5*, *DEPP 6.7* and *EG 5* set out information on the *FCA's* settlement process and the settlement discount scheme.

- 19.182 When determining whether to take action to impose a suspension under the MCDO, the *FCA's* policy includes having regard to the relevant factors in *DEPP 6A.2* and *6A.4*. When determining the length of the period of suspension, the *FCA's* policy includes having regard to the relevant principles and factors in *DEPP 6A.3*.

19.183 The *FCA* will apply the approach to publicity that is outlined in *EG* 6.

Annex F

Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text unless otherwise stated.

Part 1

[*Editor's Note:* The proposed changes shown below are based on the Handbook text as if the changes proposed in CP14/20 (*Implementing the Mortgage Credit Directive and the new regime for second charge mortgages*) have already been made as set out in that CP.]

2.6 Specified investments: a broad outline

...

Rights under a regulated mortgage contract

- 2.6.27 G In accordance with article 61(3)(a) of the *Regulated Activities Order*, a *regulated mortgage contract* is a contract which, at the time it is entered into, satisfies the following conditions:

...

- (3) at least 40% of that land is used, or is intended to be used, as or in connection with a dwelling.

Detailed guidance on this is set out in PERG 4.4 (Guidance on regulated activities connected with mortgages), however generally speaking the definition of *regulated mortgage contract* does not include certain loans to commercial borrowers, second charge loans by a credit union, exempt consumer buy-to-let mortgage contracts (see PERG 4.4.30G) and second charge bridging loans (see PERG 4.4.1-A G).

...

2.7 Activities: a broad outline

...

Exemption relating to the purchase of land for non-residential purposes

- 2.7.19E G A *credit agreement* is an exempt agreement if at, the time it is entered into:
- (1) any sums due under it are secured by a *legal or equitable mortgage on land*; ~~and~~
 - (2) less than 40% of the *land* is used, or is intended to be used, as or in connection with a dwelling:

- (a) ...
- (b) in the case of *credit* provided to trustees, by an individual who is a beneficiary of the trust or a related person of a beneficiary; and

(2A) the credit agreement is not an MCD article 3(1)(b) credit agreement.

(3) ...

(4) ~~This exemption is intended to mirror the definition of *regulated mortgage contract* so that buy to let loans (that are not secured by a legal mortgage on the *borrower's* or a related person's residence) are not regulated either as *regulated mortgage contracts* or as *regulated credit agreements*.~~ [deleted]

...

2.8 Exclusions applicable to particular regulated activities

2.8.6A G The exclusions in the *Regulated Activities Order* that relate to the various *arranging* activities are as follows:

...

(14) Under article 36(2A), arrangements related to *regulated mortgage contracts* are excluded from article 25A in so far they constitute *CBTL business* (see *PERG 4.10B*) carried on by a *CBTL firm*.

...

2.8.6C G The following activities are excluded from the *regulated activity* of *credit broking*:

...

Other exclusions

(7) The exclusions for *electronic commerce activities* by an *incoming ECA provider* (see *PERG 2.9.18G*), activities carried on by a *CBTL firm* with a view to an individual entering into a *CBTL credit agreement* (see *PERG 2.9.28G* and *PERG 4.10B*) and activities carried on by *local authorities* (see *PERG 2.9.23G*) also apply to *credit broking*.

...

2.8.12A G Advice given by an *unauthorised person* in relation to a *home finance transaction* or *advising on regulated credit agreements* the purpose of which is to *acquire land* in the circumstances referred to in *PERG 2.8.6AG(5)(a)* or

(b) (Arranging deals in investments and arranging a home finance transaction) is also excluded. In addition:

- (1) the following exclusions apply in specified circumstances where a *person* is *advising on investments, advising on regulated credit agreements the purpose of which is to acquire land* or *advising on a home finance transaction*:

...

- (f) as a CBTL firm in the course of CBTL business (see PERG 4.10B) (in the case of advising on regulated credit agreements the purpose of which is to acquire land);

...

2.8.14B G The following exclusions apply in specified circumstances where a *person* is *administering a home finance transaction*:

...

- (5) ... ;

- (6) in the course of carrying on CBTL business as a CBTL firm (see PERG 4.10B).

...

2.9 Regulated activities: exclusions applicable in certain circumstances

...

Registered consumer buy-to-let credit firms

2.9.28 G This group of exclusions applies, in specified circumstances, to the regulated activities of:

- (1) arranging (bringing about) regulated mortgage contracts;
 (2) making arrangements with a view to regulated mortgage contracts;
 (3) credit broking;
 (4) advising on regulated mortgage contracts;
 (5) advising on regulated credit agreements the purpose of which is to acquire land;
 (6) exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement;
 (7) entering into a regulated credit agreement as a lender;

(8) entering into a regulated mortgage contract;

(9) administering a regulated mortgage contract.

2.9.29 G These exclusions apply to any *CBTL business* carried on by a *CBTL firm* (see *PERG 4.10B*).

...

4 **Guidance on regulated activities connected with mortgages**

...

4.2.3 G A *person* who is concerned to know whether his proposed activities may require *authorisation* will need to consider the following questions (these questions are a summary of the issues to be considered and have been reproduced, in slightly fuller form, in the flowchart in *PERG 4.18*):

...

(4A) is the only available exclusion the one for *CBTL firms* (see *PERG 4.10B (Regulation of buy to let lending)*)?

...

(5A) ...

(6) if the answer to 4A is “no” and it is not the case that all of my activities are excluded, am I a *professional firm* whose activities are exempted under Part XX of the *Act* (see *PERG 4.14 (Mortgage activities carried on by professional firms)*)?

...

If a *person* gets as far as question (8) and the answer to that question is 'no', that *person* requires *authorisation* and should refer to the *FCA* website "How do I get authorised": <http://www.fca.org.uk/firms/about-authorisation/getting-authorised> for details of the application process.

However if a *person* wishes to carry on *CBTL business* see *PERG 4.10B (Regulation of buy to let lending)* it may be able benefit from the exclusion for *CBTL firms* and be placed on the relevant register described in *PERG 4.10B* if:

(a) no other exclusion applies; and

(b) the answer to questions (6) to (8) is “no”.

Note that the *person* would need to apply to be included on the relevant register described in *PERG 4.10B*.

...

4.4.1-A G A contract is not a *regulated mortgage contract* if it is:

...

(4) a *CBTL credit agreement* excluded as described in *PERG 4.4.30G*.

...

4.4.6A G ...

(4) A buy-to-let loan secured on the property to be let is potentially a *regulated mortgage contract*. However such a loan may be excluded as a loan to a commercial borrower under the exclusions referred to in (3) or under the buy-to-let exclusions described in *PERG 4.4.30G* and *PERG 4.10B* which refer to consumer borrowers.

...

Exclusion for certain consumer buy-to-let mortgage contracts

4.4.30 G There is an exclusion for what the *RAO* refers to as an “exempt consumer buy-to- let mortgage contract”. This is explained in *PERG 4.10B* (Regulation of buy-to-let lending).

Certificate that borrower is not a consumer

...

4.4.33 G For a *buy-to-let credit agreement* (described in *PERG 4.10B.5G*), article 61A(5) of the *Regulated Activities Order* says that a borrower is to be regarded as entering into an agreement, or intending to enter into an agreement, for the purposes of a business if (a) or (b) are met:

(a) (i) the borrower previously purchased, or is entering into the contract in order to finance the purchase by the borrower of, the land secured by the mortgage;

(ii) at the time of the purchase the borrower intended that the land would be occupied as a dwelling on the basis of a rental agreement and would not at any time be occupied as a dwelling by the borrower or by a related person (see *PERG 4.4.19G*), or where the borrower has not yet purchased the land the borrower has such an intention at the time of entering into the contract; and

(iii) where the borrower has purchased the land, since the time of the purchase the land has not at any time been occupied as a dwelling by the borrower or by a related person (see *PERG 4.4.19G*);

(b) the borrower is the owner of land, other than the land secured by the

mortgage, which is

- (i) occupied as a dwelling on the basis of a rental agreement and is not occupied as a dwelling by the borrower or by a related person (see PERG 4.4.19G); or
- (ii) secured by a mortgage under a buy-to-let credit agreement.

...

- 4.6.32 G The *Regulated Activities Order* contains a number of other exclusions which have the effect of preventing certain activities from amounting to *advising on regulated mortgage contracts*. These are referred to in PERG 4.10 (Exclusions applying to more than one regulated activity) and PERG 4.10B (Regulation of buy to let lending).

...

- 4.7.2 G The *Regulated Activities Order* contains an exclusion which has the effect of preventing certain activities of trustees, nominees and personal representatives from amounting to *entering into a regulated mortgage contract*. There is also an exclusion for *local authorities* and their wholly-owned subsidiaries. These are referred to in PERG 4.10 (Exclusions applying to more than one regulated activity). There is also an exclusion related to consumer buy-to-let lending, which is described in PERG 4.10B. In addition...

...

- 4.8.8 G The *Regulated Activities Order* contains an exclusion which has the effect of preventing certain activities of trustees, nominees and personal representatives from amounting to *entering into a regulated mortgage contract*. There is also an exclusion for *local authorities* and their wholly-owned subsidiaries. These are referred to in PERG 4.10 (Exclusions applying to more than one regulated activity). There is also an exclusion related to consumer buy-to-let lending, which is described in PERG 4.10B.

...

...

Exclusion: Buy to let

- 4.10.11 G There is an exclusion for CBTL business. It is described in PERG 4.10B (Regulation of buy to let lending).

...

8.17 Financial promotions concerning agreements for qualifying credit

...

- 8.17.3 G An agreement for *qualifying credit* includes the following types of loan in

addition to those that would be a *regulated mortgage contract*, but in each case only if the lender carries on the *regulated activity of entering into regulated mortgage contracts*:

- (1) ~~loans secured by a second or subsequent charge; [deleted]~~

...

...

Part 2

Insert new sections PERG 4.10B after PERG 4.10A. In this Part, the text is all new and is not underlined.

4.10B Regulation of buy to let lending

Introduction

- 4.10B.1 G Article 72I of the *Regulated Activities Order* (Registered consumer buy-to-let mortgage firms) excludes certain consumer buy-to-let credit business from the *Regulated Activities Order*. Instead that business is regulated under Part 3 of the *MCD Order*. This section provides more detail about the regulation of consumer-buy-to-let business.

Details about the Regulated Activities Order exclusion

- 4.10B.2 G Article 72I of the *Regulated Activities Order* excludes *CBTL business* from the *regulated activities* listed in *PERG 2.9.28G*.
- 4.10B.3 G The exclusion only applies to a *person* included on the *FCA* register described in *PERG 4.10B.16G*.
- 4.10B.4 G There are three main conditions for *regulated mortgage activities* to be *CBTL business*:
- (1) the activities must relate to *buy-to-let credit agreements* (see *PERG 4.10B.5G*);
 - (2) the borrower must be acting as a consumer (see *PERG 4.10B.10G(2)*); and
 - (3) the activities must come within the definition of *CBTL business* (see *PERG 4.10B.8G*).

What does buy-to-let credit agreement mean?

- 4.10B.5 G (1) A *buy-to-let credit agreement* means either:
- (a) a contract that at the time it is entered into has the following characteristics:

- (i) a lender provides credit to an individual or trustees (the 'borrower');
 - (ii) the contract provides for the obligation of the borrower to repay to be secured by a mortgage on land in the *EEA*;
 - (iii) at least 40% of that land is used, or is intended to be used, as or in connection with a dwelling by the borrower (or, where trustees are the borrower, by an individual who is a beneficiary of the trust) or by a related *person*; and
 - (iv) provides that the land secured by the mortgage is subject to the requirements in (2); or
- (b) is a *MCD article 3(1)(b) credit agreement* which provides that the land, or existing or projected building, to which it relates is subject to the requirements in (2).

(2) The requirements are that the land, or existing or projected building (as applicable)

- (a) cannot at any time be occupied as a dwelling by the borrower or by a related person; and
- (b) is to be occupied as a dwelling on the basis of a rental agreement.

4.10B.6 G Related person is defined in *PERG* 4.4.19G.

4.10B.7 G *PERG* 4.4.6AG explains why the requirement in *PERG* 4.10B.5G that the borrower does not use the land as a dwelling does not take the contract out of the definition of *regulated mortgage contract* altogether without having to rely on the consumer buy-to-let exclusion described in this section.

Business covered by Part 3 of the Mortgage Credit Directive Order 2015:
Introduction

4.10B.8 G *CBTL business* means the activities in the table in *PERG* 4.10B.9G.

4.10B.9 G Table: Definition of consumer buy-to-let business

Activity	Explanation
Entering into, or promising to enter into, a <i>CBTL credit agreement</i> in the course of a trade, business or profession (acting as a <i>CBTL lender</i>)	See <i>PERG</i> 4.10B.11G(1)

Administering a <i>CBTL credit agreement</i> in the course of a trade, business or profession (acting as a <i>CBTL lender</i>)	See <i>PERG</i> 4.10B.11G(2)
Acting as a <i>CBTL arranger</i> in relation to a <i>CBTL credit agreement</i>	See <i>PERG</i> 4.10B.12G
Acting as a <i>CBTL adviser</i> in relation to a <i>CBTL credit agreement</i>	See <i>PERG</i> 4.10B.13G
A <i>CBTL credit agreement</i> is explained in <i>PERG</i> 4.10B.10G	

Meaning of CBTL credit agreement

- 4.10B.10 G A *CBTL credit agreement* means a contract that meets the following conditions:
- (1) it meets the definition of a *buy-to-let credit agreement* in *PERG* 4.10B.5G; and
 - (2) it is not entered into by the borrower wholly or predominantly for the purposes of a business carried on, or intended to be carried on, by the borrower.
- 4.10B.11 G (1) *PERG* 4.4.33G explains when a borrower is regarded as entering into a *buy-to-let credit agreement* for the purpose of a business carried on, or intended to be carried on, by the borrower.
- (2) A person administers a *CBTL credit agreement* if the person carries on *administering a regulated mortgage contract* in respect of the *CBTL credit agreement*, or would carry on that regulated activity in respect of the *CBTL credit agreement* if it was not a *person* included on the *FCA* register described in *PERG* 4.10B.16G.

Business covered by Part 3 of the Mortgage Credit Directive Order 2015: Credit intermediaries

- 4.10B.12 G A *person* is acting as a *CBTL arranger* if the person:
- (1) is not a lender as described in the first row of the table in *PERG* 4.10B.9G;
 - (2) is not merely introducing, either directly or indirectly, a borrower to a lender or credit intermediary;
 - (3) is acting in the course of the *person's* trade, business or profession, for remuneration, which may take a pecuniary form or any other agreed form of financial consideration; and

- (4) meets one or more of the following conditions:
- (a) the *person* presents or offers *CBTL credit agreements* to consumers; or
 - (b) the *person* assists consumers by undertaking preparatory work or other pre-contractual administration in respect of *CBTL credit agreements* other than as referred to in (a); or
 - (c) the *person* concludes *CBTL credit agreements* with consumers on behalf of the lender.

Business covered by Part 3 of the Mortgage Credit Directive Order 2015:
Advisers

- 4.10B.13 G Under article 6(1) of the *MCD Order* a *person* is acting as a *CBTL adviser* if in the course of that *person's* trade, business or profession, the *person* provides personal recommendations to a consumer in respect of one or more transactions relating to *CBTL credit agreements*.
- 4.10B.14 G Under article 6(2) of the *MCD order* a *person* who provides personal recommendations to a consumer in respect of one or more transactions relating to *CBTL credit agreements* is not acting as a *CBTL adviser* if the recommendations are provided:
- (1) in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the making of those recommendations; or
 - (2) in the context of managing existing debt as an insolvency practitioner where that activity is regulated by legal or regulatory provisions or as part of public or voluntary debt advisory services which do not operate on a commercial basis.

Link to the Mortgage Credit Directive

- 4.10B.15 G (1) The definitions of *CBTL arranger* and *CBTL adviser* are largely the same as those under the *Mortgage Credit Directive*.
- (2) There is *guidance* on these terms in *PERG 4.10A* (Activities regulated under the Mortgage Credit Directive).
- (3) The main difference between the definitions in this section and those in *PERG 4.10A* is that this section only relates to *CBTL credit agreements*.

Registration of consumer buy-to-let mortgage firms

- 4.10B.16 G Part 3 of the *MCD Order* has a procedure for the *FCA* to include a person carrying on one of the activities described in *PERG 4.10.9G* in a register.

- 4.10B.17 G There are two types of *person* subject to the regime:
- (1) *firms* with *Part 4A permissions* (including *firms* with an interim permission to carry on one or more regulated activities under article 56 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013); and
 - (2) *unauthorised persons* described in article 8(3) of the *MCD order*.
- 4.10B.18 G (1) There are detailed conditions for admission to the register that apply to an unauthorised *person* described in article 8(3) of the *MCD Order*.
- (2) These detailed conditions do not apply to a *firm* in *PERG* 4.10B.17G(1). The conditions for a *firm* in *PERG* 4.10B.17G(1) to be included on the register are simpler.
- 4.10B.19 G Part 3 of the *MCD Order* has a detailed regulatory regime for firms subject to that regime.
- Exempt consumer buy-to-let contracts
- 4.10B.20 G There is another exclusion for buy-to-let contracts in addition to the one in article 72I of the *Regulated Activities Order* (see *PERG* 4.10B.1G for article 72I).
- 4.10B.21 G A contract is excluded from the definition of *regulated mortgage contract* if, at the time it is entered into, it meets the following conditions:
- (1) it is a consumer buy-to-let mortgage contract within the meaning of the *MCD Order* (see *PERG* 4.10B.10G for an explanation of what this means); and
 - (2) it is either:
 - (a) of a kind to which the *Mortgage Credit Directive* does not apply by virtue of the exclusions summarised in *PERG* 4.10A.5G(1) to (9); or
 - (b) a bridging loan (see *PERG* 4.13.6G).
- 4.10B.22 G The *RAO* refers to the contract described in *PERG* 4.10B.21G as an “exempt consumer buy-to-let mortgage contract”.
- 4.10B.23 G (1) The exclusion for exempt consumer buy-to-let mortgage contracts has the effect that a *person* whose business covers exempt consumer buy-to-let lending does not have to consider its position in respect of Part 3 of the *MCD Order* or consider the exclusion in *PERG* 4.10B.2G.
- (2) However, exempt consumer buy-to-let lending is not excluded from the regime in Part 3 of the *MCD Order* altogether. This is because

the *Part 4A permission* of a *firm* that has *permission* to carry out any of the following activities:

- (a) *arranging (bringing about) regulated mortgage contracts;*
- (b) *making arrangements with a view to regulated mortgage contracts;*
- (c) *credit broking;*
- (d) *advising on regulated mortgage contracts;*
- (e) *entering into a regulated mortgage contract;*
- (f) *administering a regulated mortgage contract;*

is subject to a *requirement* that the *firm* does not carry on any activity that would constitute *CBTL business* as defined in *PERG 4.10B.9G* unless the *firm* is registered as described in *PERG 4.10B.16G*.

- (3) That *requirement* covers the exempt consumer buy-to-let lending referred to in (1).

4.10B.24 G Another purpose of the exclusion in *PERG 4.10B.2G* is that it provides an exclusion in relation to *credit broking*.

Does all buy-to-let business fall under this regime?

4.10B.25 G Part 3 of the *MCD Order* does not apply to all mortgage contracts secured on buy-to-let property.

4.10B.26 G The regime is only relevant to credit secured on residential property. If a loan to a buy-to-let borrower is secured on commercial property, the loan is not a *residential mortgage contract* and this chapter does not apply.

4.10B.27 G The Part 3 regime is only relevant to consumer borrowers. Non-consumer borrowers fall outside Part 3. Many will be excluded from *regulated mortgage activities* altogether by the exclusions for loans to business borrowers in *PERG 4.4.17G* to *PERG 4.4.21G*.

Financial Conduct Authority



PUB REF: 004984

© Financial Conduct Authority 2015
25 The North Colonnade Canary Wharf
London E14 5HS
Telephone: +44 (0)20 7066 1000
Website: www.fca.org.uk
All rights reserved