

Finalised guidance

FG18/6: Helping tenants find alternatives to high-cost credit and what this means for social housing landlords

December 2018

Changes to this guidance – August 2019

We are in the process of updating this guidance – FG18/06 – to reflect new legislation, as some parts of this Finalised Guidance are now out of date.

This is because of an amendment to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001. This means that registered social landlords (RSLs) can now refer tenants, or potential tenants, to some credit activities without requiring authorisation from the FCA.

RSLs can only refer without FCA authorisation (known as an exclusion) where:

- the activity concerned is effecting an introduction of an individual who wishes to enter into a credit agreement
- the introduction is to a credit union, community benefit society, registered charity (or subsidiary of a registered charity), community interest company limited by guarantee or subsidiary of an RSL, and
- the introduction is provided fee-free, i.e. the RSL receives no fee (which includes pecuniary consideration or any other financial consideration)

The rest of FG18/06 remains relevant to RSLs. Those carrying out credit broking activities which do not fall within the terms of the exclusion still require authorisation as credit brokers.

1 Introduction

- 1.1 This document aims to assist social housing landlords, including local authorities and housing associations, to understand the scope and application of consumer credit regulation when they help tenants to find alternatives to high-cost credit. These alternatives could be loans from credit unions or Community Development Finance Institutions (CDFIs), for example.¹ They might also be non-credit alternatives such as

¹ <https://www.fca.org.uk/publication/feedback/high-cost-credit-review-update.pdf> at paragraphs 4.23-4.25.

furniture re-use schemes or community organisations that help people to acquire household appliances.

- 1.2 We recognise that the social housing model may contribute to some tenants turning to high-cost credit as they are required to move promptly into new accommodation, and in some situations need to make quick decisions on how to acquire essential furniture and other household goods. Moving with such short notice may have cost implications for tenants and so put consumers who are in vulnerable circumstances at risk of turning to high-cost credit. In such circumstances, understanding that there may be alternatives to high-cost credit will be likely to assist tenants.

- 1.3 We want to support and encourage referrals to providers of alternatives when consumers need credit, and consider that in this area social landlords can play a key role in assisting tenants find alternatives to high-cost credit when looking to obtain essential household goods. This can foster better options for consumers and could provide them with a cheaper, lower-risk source of finance. Social landlords may also be able to support tenants in sourcing goods in other ways, for example on hire or goods which have recently been repaired or refurbished.

Who does this guidance apply to?

- 1.4 This guidance applies to providers of social housing that are registered with the relevant housing regulator in England, Scotland, Wales or Northern Ireland. As slightly different terminology is in use across the UK, we refer to these collectively in this guidance as 'Registered Social Landlords' (RSLs) or simply as social landlords. Providers of social housing may include housing associations and housing charities, which may or may not already be authorised by the FCA.
- 1.5 Local authorities are excluded from the legal requirement to be authorised for most credit-related regulated activities, including credit broking, debt counselling and debt adjusting.² Nevertheless, this guidance may be of interest to local authorities that provide social housing.

² See our Perimeter Guidance ('PERG') PERG 2.9.23G for guidance on the exclusion for local authorities in Article 72G of The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001
<https://www.handbook.fca.org.uk/handbook/PERG/2/9.html>

2 Making referrals

- 2.1 We want to encourage social landlords to help tenants find alternatives to high-cost credit. There are many things a landlord can do to help. Depending on who the landlord is and the circumstances, some activities will not be credit broking and will not fall within the scope of financial regulation. Other activities may be credit broking, which is a regulated activity likely to require authorisation by the FCA.

Credit broking

- 2.2 Credit broking is defined in legislation. We explain in our perimeter guidance (PERG) the six types of activity that fall within the definition of credit broking.³
- 2.3 Three types of activity can be credit broking regardless of whether the broker receives a fee or other form of financial consideration. These are:
- (1) effecting an introduction of an individual who wishes to enter into a credit agreement to another person, with a view to that person entering as lender into a credit agreement by way of business
 - (2) effecting an introduction of an individual who wishes to enter into a consumer hire agreement to another person, with a view to that person entering as owner into a consumer hire agreement by way of business
 - (3) effecting an introduction of an individual who wishes to enter into a credit agreement or a consumer hire agreement to a person who carries on an activity in (1) or (2) by way of business (in other words, to another credit broker)
- 2.4 Three further types of activities only come within the definition of credit broking where the broker receives a fee or any other form of financial consideration. These are:
- (4) presenting or offering an agreement which would (if entered into) be a credit agreement
 - (5) assisting an individual by undertaking preparatory work with a view to that person entering into a credit agreement
 - (6) entering into a credit agreement on behalf of a lender

³ See PERG 2.7.7E: <https://www.handbook.fca.org.uk/handbook/PERG/2/7.html>

Example

Some of your tenants moving into unfurnished properties do not possess essential household goods and furniture such as a bed or fridge. You wish to provide assistance.

Whether the assistance you provide involves credit broking will depend on the individual facts and circumstances of the case. Here are some **examples** of ways you might help your tenants which, as a general indication, are **not likely to be credit broking**:

- providing general information on your website about the services available from credit providers such as credit unions or CDFIs but without (expressly or by implication) identifying or recommending a specific provider or giving any contact details
- referring a tenant to a local charity or community organisation that gives household goods to people free of charge (and does not also act as a credit provider, credit broker or provider of goods on hire)
- referring a tenant to a seller of goods (who does not also act as a credit provider, credit broker or provider of goods on hire), e.g. a second-hand furniture shop

The next list has **examples** of ways you might assist your tenants which, as a general indication, are **likely to be credit broking**:

- referring a tenant to or recommending a specific credit provider such as a local credit union or community development finance institution (CDFI)
- referring a tenant to or recommending a specific credit broker
- providing details to the tenant for contacting a credit provider or broker
- taking the lead in calling a credit provider or setting up a meeting on the tenant's behalf
- referring a tenant to or recommending a provider of goods on hire

- 2.5 In summary, you are likely to be engaged in 'credit broking' if you refer tenants to providers of credit, providers of goods on hire, or other credit brokers. If as a social landlord you are currently doing this, or planning to do so, you are likely to need FCA authorisation.

What this means for you

- 2.6 As noted above, whether or not an activity involves credit broking will depend upon the individual facts and circumstances of the case. This means that the lists above can only provide a general indication of whether an activity is likely to be credit broking, not a definite answer.

- 2.7 One aspect to consider is whether you are conducting the activity 'by way of business'. In PERG 2.3.3⁴, we set out the main factors that are relevant in assessing whether an activity is being carried out 'by way of business'. None of these factors is likely to be decisive on its own.
- 2.8 As indicated in paragraph 2.3 above, it is important to note in relation to the three 'introducer' activities that the fact you may not receive a fee, commission or other form of financial remuneration for providing details or referring your tenants to sources of credit or hire does not necessarily mean that you will not be credit broking.
- 2.9 As a social landlord, we recognise that making an assessment on whether you are engaged in credit broking can be difficult. We want to help make this easier and so we have set up a specialist team that can provide individual guidance to social landlords. You can contact them at the following email address: RSL@fca.org.uk.
- 2.10 Individual guidance is guidance that the FCA gives to a person or organisation which relates to its own particular circumstances or plans. You can request individual guidance from us. We are also happy to discuss a potential request in advance.
- 2.11 We can give you the most help if you are clear in your request about the issue on which you are seeking individual guidance, and include full details of the activities you plan to undertake when helping tenants find alternatives to high-cost credit. Please state how (and how often) this is likely to be done and whether it may involve specific providers.
- 2.12 If there are relevant circumstances of which we are not aware, the extent to which you can rely on the individual guidance may be limited. If the circumstances you describe to us later change, the guidance may no longer apply and you might need to ask for further guidance.
- 2.13 You can find further information about individual guidance in Chapter 9 of our Supervision manual.⁵
- 2.14 It is important that you are correctly authorised for the types of activities you conduct or wish to conduct. If you are not, the credit or hire agreements your tenants enter into may be unenforceable. You may also be committing a criminal offence. If you are not sure whether you are engaged in credit broking, we would encourage you to contact us.

⁴ <https://www.handbook.fca.org.uk/handbook/PERG/2/3.html>

⁵ <https://www.handbook.fca.org.uk/handbook/SUP/9/?view=chapter>

3 Authorisation process

- 3.1 If you are engaged in regulated activity, you will need authorisation from the FCA. You will not need authorisation if your activity is covered by a relevant exclusion (for example, the exclusion relating to local authorities) or if you are an exempt person such as an appointed representative of an authorised person⁶.
- 3.2 We will do all we can to assist you in the application process and have a specialist authorisation team to assist. The team will assess your application by considering the size and nature of the regulated activity that you do and the potential risks to consumers.
- 3.3 The additional information in this section will help you understand the authorisation process. To assist you further, there is a summary of the process for applying for authorisation on our website – see <https://www.fca.org.uk/firms/authorisation/how-to-apply>.
- 3.4 If you are already authorised by the FCA for another activity, for example debt adjusting or debt counselling, you will need to apply to us for a 'variation of permission'. This means applying to have an extra activity, in this case credit broking, added to the permissions that you hold. This is often a straightforward process. You can find information about applying for a variation of permission on our website – see <https://www.fca.org.uk/firms/variation-permission>.

Getting ready for authorisation

- 3.5 There is an online checklist for the main things you need to do before applying to us for authorisation for a credit-related regulated activity - <https://www.fca.org.uk/firms/authorisation/how-to-apply/consumer-credit>.
- 3.6 You would have to submit an application, but this would only have to focus on how you meet our standards in relation to the activity you are carrying on.
- 3.7 We take a risk-based approach to authorisations. This means that the level of information we require from applicants is proportionate to the level of risk to consumers that is associated with the activity. For example, not all of the points in the checklist mentioned in paragraph 3.5 will necessarily be relevant for you as an RSL seeking authorisation for credit broking, so do contact us to discuss what we expect from you.

⁶ See section 4 below for further information on appointed representatives.

- 3.8 Where there are no charges to consumers and no remuneration paid by the provider to the broker, credit broking is likely to be a relatively low risk activity since there is very little risk of people being driven to unaffordable or inappropriate sources of finance in order to make the broker more money.
- 3.9 One document we will ask to see as part of your application is your business plan. We may not need to see all this information again if you are already authorised with us and are requesting a variation of permissions.

Business plan

As a social landlord you may wish to consider including in your business plan:

- The legal status of your organisation
- Your primary business purpose, e.g. social housing
- Why you want to carry out regulated activities, e.g. credit broking
- The customer base of these regulated activities, e.g. what types of tenants, on what scale and how they will be identified
- The services you provide and any areas you specialise in
- How your organisation is set up and governed
- The background and experience of everyone performing significant influence controlled functions⁷
- Your long-term strategy and your financial plans
- Your experience of regulated activities including any existing permissions you already hold

- 3.10 Your application would be dealt with by a team of specialists. They can provide you with all the help you need and make the process as smooth as it can be. If you would like us to review your documents or to discuss them ahead of making an application, we would be happy to assist. You can email our specialist team at RSL@fca.org.uk.

⁷ More information is provided in our Guide for Consumer Credit Firms: <https://www.fca.org.uk/publication/finalised-guidance/consumer-credit-being-regulated-guide.pdf>

- 3.11 We will also ask you to demonstrate how your organisation meets our requirements for authorisation including our minimum conditions, known as Threshold Conditions, which all firms must meet. Guidance on the Threshold Conditions is provided in our Handbook⁸ and summarised in our Guide for Consumer Credit Firms.⁹ Our specialist team would be happy to discuss the Threshold Conditions and how they may apply to you using the following email address: RSL@fca.org.uk

Once you are ready to apply, what do you need to do?

- 3.12 You will need to complete your application on Connect, our online system.¹⁰ We will assess your application to see if you meet the standards we require.
- 3.13 If your application is incomplete or needs further explanation, we will ask you to clarify it or provide further information or documentation. For example, there may be inconsistent or missing answers.
- 3.14 We recognise that this may be an unfamiliar process, particularly where FCA-regulated activity is not a primary function for you. However, we can assist you to make this a more straightforward process.
- 3.15 We have set up a team of specialists within our Authorisations Department, who are familiar with applications from social landlords. They will provide you with the help you need.
- 3.16 Our specialist team will usually be able to process your application much more quickly but we have a statutory duty to make a decision within:
- 6 months of receiving your completed application
 - 12 months of receiving an incomplete application (or 6 months from when an incomplete application becomes complete)
- 3.17 You should not start the activity for which you are making the application until you receive authorisation from us.

Full or limited permission

- 3.18 We have two categories of authorisation for consumer credit firms:
- 'limited permission'
 - 'full permission'

⁸ <https://www.handbook.fca.org.uk/handbook/COND/1/?view=chapter>

⁹ <https://www.fca.org.uk/publication/finalised-guidance/consumer-credit-being-regulated-guide.pdf>

¹⁰ Our online application system, Connect: <https://www.fca.org.uk/firms/connect>

- 3.19 If you need to apply for full permission, we will need more details about your business than if you apply for limited permission. You will also be subject to more checks and have more conditions to meet during authorisation and when you carry out credit-related regulated activities.
- 3.20 Limited permission is possible for only certain types of activities. In your role as a social landlord it may include recommending providers to your tenants who can offer regulated consumer hire or hire-purchase agreements.
- 3.21 Limited permission is not available if your organisation is already authorised for another activity needing full permission, such as mortgage administration.
- 3.22 If you wish to refer tenants to providers of loans, for example credit unions and CDFIs, it is likely you will need to apply for full permission. A list of full permission activities is provided in our Guide for Consumer Credit Firms - <https://www.fca.org.uk/publication/finalised-guidance/consumer-credit-being-regulated-guide.pdf>.
- 3.23 If you wish to discuss these activities further you can use the dedicated email address and we will be happy to assist: RSL@fca.org.uk.
- 3.24 As part of the consideration of whether limited permission is applicable, you will also be asked if you have acted as lender in relation to credit agreements or mortgages. In particular, whether you have a back-book of second-charge loans entered into before April 2014. If you do, it is likely that you will need permission for exercising, or having the right to exercise, a lender's rights and duties under a regulated credit agreement. This requires full permission and will necessitate an additional application fee. If you have any questions about this, please use the dedicated email address RSL@fca.org.uk.

Approved persons and controlled functions

- 3.25 When you are authorised you will also have to meet requirements on 'approved persons'. We would usually expect you to submit your approved persons application at the same time as your authorisation application.
- 3.26 An approved person is an individual we approve to perform 'controlled functions'. The controlled functions are important considerations in well-run businesses and emphasise the role of senior staff and others for overseeing compliance with rules and legislation.¹¹

¹¹ More information on controlled functions is available on our website – see <https://www.fca.org.uk/firms/approved-persons/controlled-functions>

- 3.27 The number and type of approved persons you require depend on what you do and the legal status of your business. Entities engaged in credit broking usually only need one approved person. This person would be responsible for ensuring the firm's consumer credit activities are carried out in a compliant manner. They also act as our point of contact within the business. We provide more information on approved persons in our Guide for Consumer Credit Firms.¹²
- 3.28 Our rules on approved persons will be replaced by the Senior Managers and Certification Regime (SM&CR). Consumer credit firms, including RSLs, will move to the new regime from 9 December 2019. You can find out more about how the SM&CR will work in our Guide for FCA Solo-Regulated Firms.¹³
- 3.29 If you have any questions about approved persons, controlled functions or the SM&CR we would be happy to assist. You can email our dedicated team at RSL@fca.org.uk.

What happens when I am authorised?

- 3.30 Once you are authorised you will be regulated by the FCA. This means you will have to meet our standards at all times. We have a range of tools which we can use to supervise firms and, if necessary, to enforce compliance with our rules. If you tell us (or we find out) that you are not meeting our standards, we will seek to work with you to resolve the matter on a voluntary basis. You can find out more about our supervisory and enforcement tools in our Guide for Consumer Credit Firms.¹⁴
- 3.31 If the people registered as approved persons (from December 2019 as senior managers) have done something wrong we can take action against them. We provide more information on this in our Guide for Consumer Credit firms.¹⁵
- 3.32 You will also have to report certain information to us on an annual basis. For credit broking, this information is limited to your annual revenue, how it is obtained, and the total number of customers and transactions in the year.

Fees

- 3.33 We are funded by the firms we regulate through fees. We aim to cover our costs in a way that is as fair and efficient as possible.
- 3.34 Firms have to pay a fee when they apply for authorisation and then annual fees for every year they are authorised. Firms that can benefit from limited permission will have lower fees than those of higher risk firms that need full permission.

¹² <https://www.fca.org.uk/publication/finalised-guidance/consumer-credit-being-regulated-guide.pdf>

¹³ <https://www.fca.org.uk/publication/policy/guide-for-fca-solo-regulated-firms.pdf>

¹⁴ <https://www.fca.org.uk/publication/finalised-guidance/consumer-credit-being-regulated-guide.pdf>

¹⁵ <https://www.fca.org.uk/publication/finalised-guidance/consumer-credit-being-regulated-guide.pdf>

- 3.35 The application fee for limited permission credit broking where your activity is not for profit is currently £100. We would be happy to discuss whether this applies to you.
- 3.36 The application fee for full permission credit broking is calculated depending on how much income is derived from the activity. It is also relevant whether your organisation is a community finance organisation, for example because it is a community benefit society or registered charity. We would expect most RSLs' applications to cost between £200 and £600.
- 3.37 The annual fee that a firm has to pay will be proportionate to the size of the firm's business and the type of authorisation. Credit brokers that generate no income from their broking activity currently pay £312 per year. If you make money by broking credit this fee will change.¹⁶
- 3.38 We are also the registering authority under the Cooperative and Community Benefit Societies Act 2014 and Cooperative and Community Benefit Societies Act (Northern Ireland). To become a registered society, applicants must register with us. Many social landlords will already be registered with us and this is separate to the issue of whether your society wishes to carry out a regulated activity. There is a one-off fee to register your society and we also charge a yearly fee, which is based on your society's total assets.
- 3.39 Up to date information about application and annual fees is available on our website - <https://www.fca.org.uk/firms/authorisation/fee>.

¹⁶ Your annual fee invoice will include fees and levies on behalf of other regulatory bodies, such as the Financial Services Compensation Scheme, Financial Ombudsman Service, and Money Advice Service, and the Illegal Money Lending Team on behalf of HM Treasury.

4 Appointed representatives

- 4.1 One method by which social landlords may adopt a more streamlined approach to authorisation is to become an appointed representative for a credit union or CDFI you wish to refer tenants to. We summarise what this means in the text box below.

Appointed representatives

An appointed representative is a firm that carries on regulated activities under the supervision of another firm that we authorise. If you wish to make referrals to a certain credit union or CDFI, you may wish to explore with them whether they would be willing to assist you by taking on the role of principal with you acting as their appointed representative.

This would require an agreement between you and the credit union or CDFI. Under this agreement, they would be responsible as the principal for ensuring that you meet our requirements. We would not have a direct relationship with you as the appointed representative.

However, it requires certain formalities:

- There must be a written contract between the credit union or CDFI as the principal and you as an appointed representative that sets out the arrangements between you in writing
- The credit union or CDFI would have to take full responsibility for ensuring that you comply with our rules
- Before entering into an agreement with you, they will need to carry out sufficient checks to ensure you are financially stable and to satisfy themselves that you have achieved, and are maintaining, a satisfactory level of competence

As an appointed representative, you will also need to understand and comply with regulatory requirements relating to the credit broking.

Further information about the responsibilities of consumer credit principals and their appointed representatives is available on our website – see <https://www.fca.org.uk/firms/appointed-representatives-principals/consumer-credit>

If you are in doubt, we suggest you apply for authorisation but welcome enquiries from social landlords for individual guidance. You can send enquiries to our dedicated team using this email: RSL@fca.org.uk.