

Buy-to-let mortgages – implementing the Mortgage Credit Directive Order 2015, feedback on CP15/3 and final rules

June 2015



Contents

Abbreviations used in this paper	3
1 Overview	5
2 Registration	9
3 Aggregate data reporting by CBTL lenders	11
4 Complaints and redress	13
5 Proposed handbook changes	14
6 Cost benefit analysis	17
Annex	
1 List of non-confidential respondents	19
Appendix	
1 Made rules (legal instrument)	20

In this Policy Statement we report on the main issues arising from Consultation Paper 15/3 *Buy-to-let mortgages – implementing the Mortgage Credit Directive Order 2015* and publish the final rules.

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Abbreviations used in this paper

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

1. Overview

Introduction

- 1.1** In February 2015, we outlined our proposed approach to implementing the government's legislative framework for consumer buy-to-let (CBTL) mortgages set out in the Mortgage Credit Directive Order 2015 ("the legislation").¹ In this Policy Statement, we summarise the feedback we received and our response, indicating where we have adjusted our approach to take respondents' views into account. We are also publishing final Handbook rules and guidance, effective from 21 March 2016.

Who does this affect?

- 1.2** This Policy Statement will interest affected lenders, administrators, intermediaries and consumers in the buy-to-let mortgage market.

Is this of interest to consumers?

- 1.3** This Policy Statement will interest consumers who may wish to take out a buy-to-let mortgage after 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.

Context

- 1.4** In our consultation we explained that the Government had decided to take advantage of an exemption in the Mortgage Credit Directive (MCD) that allows Member States not to apply the Directive to buy-to-let activity if they have an appropriate framework for regulating it. The Government set out such a framework in Part 3 of the legislation² which establishes conduct standards, based on the MCD, that will apply to a firm conducting broking, advisory or lending activity with a buy-to-let consumer. These standards come into effect from 21 March 2016 and do not apply to a buy-to-let customer acting for business purposes.
- 1.5** The legislation does not give us general rule-making powers, such as the ability to modify the conduct standards. It does give us powers to register, supervise and – where appropriate – take

¹ www.fca.org.uk/static/documents/consultation-papers/cp15-03.pdf

² www.legislation.gov.uk/uksi/2015/910/pdfs/uksi_20150910_en.pdf

action against firms carrying out CBTL activity. In CP15/3, we put forward a set of proposals designed to give effect to those powers.

Summary of feedback and our response

- 1.6** In general, respondents recognised that the scope of this consultation was in line with the powers conferred on us by legislation.
- 1.7** There was broad support for our proposed approach across each of the four main areas on which we consulted.
- **Registration** – respondents welcomed our intention to replicate the registration processes set out in legislation. Some firms requested early sight of the application forms. We are issuing the specimen application form for unauthorised firms alongside this Policy Statement to aid their planning. See our response to question 1, below, for more detail.
 - **Aggregated data reporting** – our proposals were seen as a proportionate way of monitoring CBTL lending volumes and informing our supervisory approach. We are clarifying some aspects in the accompanying guidance in light of consultation feedback and also adjusting the timing of reporting. See our response to question 2.
 - **Complaints handling rules** – our proposal to apply the majority of our complaints handling rules (set out in the Dispute Resolution section in the FCA Handbook – DISP) to firms' CBTL activity was broadly supported. Some firms that are already subject to the requirements in DISP for other regulated activities suggested that all of the DISP rules should apply to CBTL activity, including complaints publication rules. Our rules would not prevent firms from publishing their own CBTL complaints data, but we do not think it would be proportionate to change our proposals to mandate this. See our response to question 3.
 - **Modifications to other Handbook modules to incorporate CBTL** – we received limited feedback on our changes that will effect the implementation and oversight of the CBTL regime. We have made some minor technical amendments in these areas. See our response to question 4 and 5.
- 1.8** In light of this feedback, we are proceeding with our proposals subject to some small changes.
- 1.9** Mixed views were expressed on whether we had correctly estimated the number of firms that will register with us to undertake CBTL activity. However, given the wide-ranging views (some respondents thought we had under-estimated, others thought we had over-estimated) and the absence of supporting evidence, we see no reason to change the estimated market sizing, costs and benefits set out in CP15/3.

Related issues

- 1.10** In March, our fees consultation (CP15/14) included details of the fee structure and registration fees applicable to CBTL firms. In March 2016 we intend to consult on CBTL firms' periodic fees and the FOS levy. To give firms some insight into each of the fees that might be payable, CP15/3 set out, but did not formally consult on, indicative upper bounds for both registration and periodic fees payable by CBTL firms.

- 1.11** Some respondents to CP15/3 expressed concerns about the indicative fee structure and fee levels, particularly for intermediaries' periodic fees. We acknowledge the concerns raised and will feed these into our other consultations on CBTL fees specified above.
- 1.12** A minority of respondents asked for clarification or guidance on specific aspects of the legislation - for example on conduct standards, and the definition of a 'buy-to-let consumer'.
- 1.13** We are not offering further interpretation on the conduct standards set out in legislation.³ In its summary of responses⁴, the government sought to shape the conduct standards, which are based largely on MCD Articles, so that they work for the buy-to-let market. Our overall approach is to allow firms the flexibility to comply with the legislative requirements in a way that fits their respective business models. Similarly, the legislation sets out a series of circumstances which would constitute a buy-to-let customer acting for the purposes of business. The responsibility sits with firms to assess individual circumstances to determine if the CBTL regime applies.

Next steps

What do you need to do next?

- 1.14** Under the legislation, firms wishing to lend, administer, intermediate, arrange or provide advisory services in relation to CBTL from 21 March 2016 will need to be registered by the FCA to do so. We aim to start accepting applications later this summer. To give firms sufficient time to plan their applications, we are publishing the specimen application form for unauthorised firms alongside this Policy Statement. Further information on the registration process for other firms is set out in response to question 1, below. We would encourage firms to apply as soon as possible after registration opens.
- 1.15** To understand the registration fees that CBTL firms will be required to pay, firms are encouraged to read our Policy Statement setting out our response to the recent fees consultation, which will be published in June 2015. Firms are also encouraged to respond to our March 2016 fees consultation, which will propose the periodic fees and Financial Ombudsman Service general levy payable by CBTL firms for 2016/17.
- 1.16** In addition to our further work on fees, we intend to issue technical documentation later this year to aid firms' reporting of CBTL aggregate data. We will also publish any further details for firms needing to register with us to undertake CBTL activity on our MCD webpage.⁵

Impact of changes on mutual societies

- 1.17** Section 138K of FSMA requires us to state if our proposed rules have a significantly different impact on authorised persons who are mutual societies, in comparison with other authorised persons. In our consultation paper, we requested comments or information from respondents on issues relating to mutual societies arising from our proposals.
- 1.18** Our initial assessment was that we did not believe our proposals gave rise to any issues and we did not receive any responses to contradict this view.

³ The Government consulted on its drafting of the MCD Order in September 2014
www.gov.uk/government/consultations/implementation-of-the-eu-mortgage-credit-directive

⁴ www.gov.uk/government/uploads/system/uploads/attachment_data/file/397904/implementation_of_the_EU_MCD_summary_of_responses.pdf

⁵ www.fca.org.uk/firms/firm-types/mortgage-brokers-and-home-finance-lenders/mcd

Equality and diversity considerations

- 1.19** Under the Equality Act 2010 we are required to consider any potentially discriminatory impact on groups with protected characteristics (age, gender, disability, race or ethnicity, pregnancy and maternity, religion, sexual orientation and gender reassignment) and also the need to eliminate discrimination and advance equality of opportunity when carrying out our activities.
- 1.20** We published the outcomes of our initial equality impact assessment in CP15/3 and invited comments or information from respondents about the impacts our proposals may have on equality and diversity issues. Our initial assessment was that we did not believe that our proposals gave rise to any equality and diversity issues and we did not receive any comments during the consultation process to contradict this view.

2. Registration

- 2.1** The 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 business ('CBTL firms') must be registered by the FCA. Firms that fail to register will be subject to a requirement on their relevant permissions that they do not carry on any CBTL activity.⁶
- 2.2** Our consultation set out the registration processes for CBTL firms, mirroring the requirements of the legislation. Firms that are not currently FCA authorised or do not hold an interim permission for consumer credit must meet the conditions set out in article 8(3) of the legislation. These conditions will also apply to firms that seek to re-register, if they have previously had their CBTL registration revoked.⁷ Other firms are to follow a streamlined application process, as per article 8(2). In our consultation we asked:

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

- 2.3** Most respondents agreed with our registration proposals and comments were limited to points of clarification. For example, some firms wanted early sight of the application forms to give them sufficient time to plan and avoid any breaks in their ability to do business. Another asked us to confirm that our proposals would only apply to CBTL firms and CBTL activity, and not to other types of firm or activity.
- 2.4** To avoid authorised firms having to register, one respondent asked whether it was possible for them to be automatically registered by the FCA and, if they are not undertaking CBTL activity, opt out. Another respondent asked for clarification on the application of the streamlined application process.
- 2.5** We received several views on the role of intermediaries. Three respondents asked whether we would expect lenders to check the registration status of CBTL intermediaries when accepting business from them. Respondents wanted clarification that brokers would no longer need to hold consumer credit permissions for their buy-to-let broking activity from 21 March 2016.
- 2.6** Finally, one firm was concerned that there would be additional impacts on their systems from having a separate CBTL register.

⁶ Article 7 of the Mortgage Credit Directive Order

⁷ Article 13 of the Mortgage Credit Directive Order

Our response

We are implementing our proposals for registering CBTL firms, based on the legislative requirements. We can confirm that our proposals will only apply to CBTL firms and activity.

We intend to start accepting applications for registration later this summer. This gives firms at least six months to register with us in advance of the legislative requirements on CBTL firms coming into effect on 21 March 2016. To assist firms with their planning, we have issued the specimen registration form for unauthorised firms alongside this Policy Statement⁸.

As set out in legislation and CP15/3, the streamlined application process will only be available to those firms holding Part 4A permissions or interim permissions for consumer credit, and where a previous CBTL registration has not been revoked. This streamlined online process will only require firms to confirm that they wish to register (whether as a lender, administrator, adviser or arranger) and pay the relevant fee. When we begin accepting registrations, firms holding Part 4A permissions will be able to follow this process using a standalone online form through Connect.⁹ Firms holding interim permissions will be asked these questions on their consumer credit application form.

In line with legislation, the FCA may only register a firm following an application for registration and therefore, the FCA is unable to automatically register all authorised firms as conducting CBTL activity and allow for an opt out.

The legislation sets out what conduct requirements a CBTL firm must comply with and it does not require lenders to check the registration status of intermediaries. Therefore, the requirement in MIPRU 5.2.3E which requires lenders use the FCA Register to check whether the intermediary holds the relevant permissions does not apply to CBTL activity. However, lenders may decide to follow this to minimise risks.

The government has previously confirmed that it is removing buy-to-let broking from the scope of credit broking under the consumer credit regime. With effect from 21 March 2016, business buy-to-let intermediation will not be a regulated activity. However, CBTL intermediation will be subject to the government's CBTL framework. They will need to register with us to undertake the activity and will no longer need a consumer credit permission for it. Firms will continue to need appropriate permissions if they are engaged in other regulated credit activities.

We will hold details of firms' CBTL registration status on our existing register and this in itself will not present an additional burden to firms.

When an authorised firm is added to the CBTL register the restriction preventing them from carrying out this activity will be automatically removed without further fee.

⁸ www.fca.org.uk/firms/firm-types/mortgage-brokers-and-home-finance-lenders/mcd

⁹ www.fca.org.uk/firms/systems-reporting/connect

3. Aggregate data reporting by CBTL lenders

- 3.1** In our consultation, we set out our proposals for aggregated data reporting from CBTL lenders to support our risk-based approach to supervision and inform our understanding of CBTL activity. We asked:

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

- 3.2** All respondents agreed with our proposals. They agreed that this was a proportionate way of meeting our aims.
- 3.3** We received a range of comments on reporting timetables and frequencies. One trade body and two building societies wanted to know when reporting would begin for firms. One building society asked how often they should report, and if data should be backfilled for the period prior to March 2016. Another asked us to delay reporting for up to six months to manage the treatment of pipeline applications.
- 3.4** We also received some requests for clarity in our accompanying draft guidance. Trade bodies asked us to clarify whether:
- cases where a Receiver of Rent has been appointed should continue to be reported as in arrears
 - repossessions should capture those taken into possession or the stock held
 - loans should be reported on an account or property level basis
 - CBTL data should be removed from other returns
 - firms should provide nil returns
 - we would publish CBTL data
- 3.5** On implementation costs, one building society commented that they anticipated system and process development to be relatively small, and one non-bank lender believed there would be no material additional costs for lenders because the data sets largely match those currently collected and provided to trade bodies for their wider buy-to-let activity.
- 3.6** In CP15/3, we explained that, once the CBTL market matures, we may consider flexing our data reporting requirements. One building society had concerns about the potential impact of this, and one trade body thought that it would not give us any additional insight if we collected transactional level data. One consultancy requested that we clarify any data collection requirements for Product Sales Data returns, if implemented.

Our response

We intend to implement our approach to collecting aggregate data from CBTL lenders, but with additional guidance in response to feedback. In particular, our guidance set out in SUP 16 clarifies that:

- the number of loans reported should be on an account level basis;
- cases under a Receiver of Rent's control should continue to be reported as in arrears where applicable;
- repossessions are to be reported on the basis of repossessions within the period and year to date, as applicable, and not the repossession stock held by the firm; and
- as with other regulatory reporting, CBTL lenders will have to submit a nil return if they are registered with us but have no CBTL lending activity to report within a quarter.

To aid our analysis of the data and simplify the requirements for firms, we are changing the reporting date and reporting frequencies. In CP15/3, we consulted on rules coming into effect from 21 March 2016, with firms required to report on a quarterly basis linked to their accounting reference date.

We are making a change to our rules for firms to report from 1 April 2016 (and only on CBTL mortgages entered into from that date) and every calendar quarter thereafter. However, we will not delay implementation of our requirements to accommodate pipeline applications. We believe the limited nature of our aggregate reporting requirements will have no material implications on the reporting of CBTL applications received prior to 1 April 2016, but which complete after this date.

Firms will be required to submit the standalone CBTL returns using our GABRIEL system. We will release technical documentation to firms later this year to support their systems development.

We do not currently intend to publish CBTL data on a regular basis, nor do we wish firms to remove details of their CBTL transactions from other regulatory returns they are required to complete by virtue of holding other permissions (eg the Mortgage Lenders and Administrators Return).

Finally, we will only be in a position to consider further changes to our aggregate CBTL reporting requirements once our understanding of firms' activity improves post-March 2016. We will consult on any proposed changes, but do not have any planned at present.

4. Complaints and redress

- 4.1** The government's proposals mean that the Financial Ombudsman Service's jurisdiction will now cover CBTL business. In our consultation we set out proposals to apply the majority of our complaints handling rules in DISP to firms' CBTL activity. We asked:

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

- 4.2** Most respondents agreed with our proposals to apply the majority of DISP rules to CBTL activity. However, there were mixed views about not applying all rules set out in DISP. Some respondents suggested that firms should be subject to all the DISP rules for CBTL activity, including the requirement to publish complaints data.
- 4.3** One consultancy asked us to clarify if the ombudsman service levy was additional to other fees paid by the firm, and whether any CBTL cases referred to FOS would count towards the 25 free case allowance (which applies to firms outside the group fee arrangement).
- 4.4** One respondent asked whether CBTL firms would be subject to the 'summary resolution communication' proposals consulted on in CP14/30¹⁰.

Our response

We intend to implement our original proposals for complaints and redress in relation to CBTL firms.

Our proposals are intended to set out the minimum we expect from firms. Beyond this, our rules do not prevent firms from complying with other rules in DISP if they wish to do so on a voluntary basis eg individual firms may decide that they wish to publish CBTL complaints volumes on a voluntary basis.

We are considering feedback to CP14/30 and intend to publish the policy statement later this year. We will confirm in this policy statement if we intend to proceed with the summary resolution communication proposals and if so which firms the rules will apply to.

As mentioned in the introduction, we are consulting separately on fees arrangements, and will take into account comments made during this consultation.¹¹ It is likely that ombudsman case fee arrangements for CBTL will operate in the same way as they do for firms' other activities and that chargeable CBTL cases will be included in the free case allowance.

¹⁰ www.fca.org.uk/static/documents/consultation-papers/cp14-30.pdf (chapter 2)

¹¹ We consulted on fee structure and registration fees separately in CP15/14 in February 2015, and intend to consult on the levels for periodic fees and the FOS levy in March 2016.

5. Proposed handbook changes

5.1 In our consultation we set out our proposals for modifications to other Handbook modules to incorporate CBTL, including changes to our Supervision Manual (SUP), Enforcement Guide (EG), Decision Procedures and Penalties Manual (DEPP), Perimeter Guidance Manual (PERG), and our Glossary. We asked:

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?

5.2 Most respondents agreed with the rules and guidance on which we consulted. A trade body felt that our PERG guidance did not result in any unintended consequences for our regulation of residential lending and struck the correct balance in setting out the distinction between CBTL, buy-to-let contracts which are regulated mortgage contracts and buy-to-let for business purposes.

5.3 However, some respondents asked for further clarification of the legislative definitions. One intermediary thought the definition of a CBTL mortgage is unclear and saw risks arising from lenders, advisers, and borrowers adopting differing interpretations and firms failing to understand the scope of their responsibilities. They were also concerned that firms might abuse the 'business' declaration to prevent buy-to-let consumers benefiting from the protections set out in the legislation. They suggested that we work with the industry to define a standard objective test so that there was a clear and consistent approach to defining a CBTL agreement. Similarly, a lender suggested that some worked examples would be useful to help firms interpret our guidance for different scenarios.

5.4 One building society asked us to clarify whether:

- all non-business buy-to-let is CBTL by default;
- contracts that currently fall under the definition of a regulated mortgage contract (eg where a property is let to a close relative) do not overlap with the CBTL definition and will continue to be MCOB-regulated loans; and
- a contract could be a CBTL contract if the person had lived in the property in the past, or wished to live in it or rent it out to close relatives (related persons) in the future.

5.5 A trade body asked if we intended to produce any further guidance on the declaration process set out in legislation, where customers confirm that they are acting for the purposes of business.

- 5.6** Some firms questioned how they should interpret the conduct standards set out in legislation – for example, how to present standard information on webpages, TV and radio.
- 5.7** One trade body and one non-bank lender asked us to allow the same transitional period to apply training and competence requirements as other MCD business.
- 5.8** We also received some requests for clarity on our draft rules and guidance. Respondents identified issues with
- the definition of a buy-to-let credit agreement used in PERG and our Glossary;
 - our cross-referencing in PERG 4.10B.21G(2)(a); and
 - the definition of a ‘related person’
- 5.9** Finally, a trade body asked us to clarify the purpose of our draft guidance on the application of the approved persons regime at SUP 12.6.8(3)G.

Our response

We intend to make final rules broadly in line with those on which we consulted.¹²

As explained in Chapter 1, we have chosen not to issue further guidance on the definitions or the conduct standards contained in the legislation.

We believe that the legislation clearly sets out the circumstances under which a buy-to-let customer is acting for the purposes of business and what must be included in the customer’s declaration that he is doing so.¹³ We wish to give firms flexibility in interpreting the legislative requirements and so do not plan to issue additional guidance. Firms must satisfy themselves whether a customer is a consumer or acting for the purposes of business based on facts specific to each case.

We can confirm that the legislation gives firms an additional year to comply with knowledge and competence requirements provided that, before 21 March 2014, the firm was undertaking activity that would have constituted CBTL.

We can also clarify that contracts currently falling under the definition of a regulated mortgage contract¹⁴ will continue to be MCOB-regulated loans.

Regarding the three specific requests for clarity on our draft rules and guidance, we wish to clarify that:

- our definitions refer to credit agreements rather than mortgage contracts because this is necessary to accommodate loans that meet the definition of MCD article 3(1)(b).¹⁵

¹² Our fees instrument, due to be published later this month, will enter into force before that included at Appendix 1 of this Policy Statement. As a consequence, the glossary definition of a ‘CBTL firm’ will form part of the fees instrument. We do not expect that this definition will be materially different to that on which we consulted in CP15/3.

¹³ Article 4 of the Mortgage Credit Directive Order

¹⁴ e.g. where a property is let to a close relative

¹⁵ MCD article 3(1)(b) is defined as “credit agreements the purpose of which is to acquire or retain property rights in land or in an existing or projected building”

- we have corrected our cross referencing in PERG 4.10B.21G
- we have clarified the definition of a 'related person' in our final rules in PS15/9, our policy statement on the wider changes arising from the Mortgage Credit Directive.¹⁶

We do not believe that it is necessary to amend SUP 12.6.8(3) as it is clear that the disapplication of the Approved Persons regime only applies to a CBTL firm's CBTL activity. This guidance does not affect the position for firms that need Approved Persons because of their other permissions.

We have addressed changes to data reporting rules and guidance in response to question 2, above.

We will also be using this Instrument to publish the final rules for non-CBTL amendments to DISP brought about by the Mortgage Credit Directive. These changes were consulted on in Chapter 5 of CP14/30.¹⁷ We received widespread support for these proposals from stakeholders, therefore we will be proceeding with the amendments.

Our final Handbook text is set out in Appendix 1.

¹⁶ www.fca.org.uk/static/fca/documents/ps15-9.pdf

¹⁷ CP14/30: Improving complaints handling, (Dec 2014). www.fca.org.uk/your-fca/documents/consultation-papers/cp14-30

6. Cost benefit analysis

- 6.1** The Financial Services and Markets Act (FSMA) 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.
- 6.2** 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.¹⁸ In our consultation we set out the CBA for the two discretionary elements of our proposals - aggregate data reporting and the complaints handling rules under DISP. We asked:

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

- 6.3** Respondents expressed mixed views on whether we had correctly estimated the number of firms that will register with us to undertake CBTL activity. However, they did not present strong evidence to challenge our CBA.
- 6.4** One trade body thought that we had overestimated the numbers of authorised lenders and brokers that will register. They thought that because CBTL is specialist business, only around 30 mainstream buy-to-let mortgage market lenders would register, and that most smaller broker firms would not apply due to the costs involved. Similarly, another trade body thought that transaction numbers would be very small.
- 6.5** A non-bank lender considered that we had underestimated broker numbers, but recognised that estimating this with certainty was challenging. They did not think that the benefits balanced the substantial costs, where there was no current evidence of detriment.
- 6.6** One smaller bank estimated that their costs in implementing the CBTL requirements were 10 times as large as our estimates, and that we had underestimated the investment resources and management time required for firms to implement.

¹⁸ www.gov.uk/government/uploads/system/uploads/attachment_data/file/397902/MCD_impact_assessment_final.pdf

Our response

It is important to recognise that our CBA only estimated the costs and benefits associated with our two discretionary proposals – the application of DISP rules and the introduction of aggregate data reporting. The government has previously estimated the costs and benefits of implementing the legislative regime as a whole.

Respondents did not present strong evidence to challenge our CBA. On this basis we are content with the estimated market sizing, costs and benefits outlined in CP15/3, and that the amendments to our Handbook text are not significant and do not alter the CBA.

Annex 1

List of non-confidential respondents

Association of Mortgage Intermediaries

Building Societies Association

Council of Mortgage Lenders

Coventry Building Society

Leeds Building Society

Matthew Speck

Morton Fraser LLP

Paragon Group of Companies PLC

SimplyBiz

Sukhija Financial

Appendix 1

Made rules (legal instrument)

**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 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 2015 (SI 2015/910) (“the MCD Order”);
 - (e) section 226 (Compulsory jurisdiction) as applied by article 26(1) of the MCD Order;
 - (f) section 395 (The FCA’s and PRA’s procedures) as applied by article 24(2) of the MCD Order;
 - (g) paragraph 23 of Schedule 1ZA (The Financial Conduct Authority) as applied by article 25 of the MCD Order; and
 - (h) paragraph 13 (FCA’s procedural rules) of Schedule 17 (The Ombudsman Scheme) as applied by article 26(1) of the MCD Order;
 - (2) the following articles of the MCD Order:

- (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 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
4 June 2015

By order of the Board of the Financial Ombudsman Service Ltd
3 June 2015

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');
 - (ii) 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 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 *related person*; and
 - (iv) provides that the land secured by the mortgage cannot at any time be occupied as a dwelling by the borrower or a *related person*;
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) credit 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 *related person*; 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; and
 - (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 *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 *related person*; 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 *related person*; 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 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 2015 (SI 2015/910).

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-authorised 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-authorised 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-authorised person* or a *PRA-authorised 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 of services or 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 15.13 applies to all CBTL firms whether or not they are also firms.

...

After SUP 15.12 insert the following new section. The text is new and is not underlined.

15.13 Notification by CBTL firms

Application and purpose

15.13.1 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*]

15.13.2 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

15.13.3 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

15.13.4 G The circumstances in which a *CBTL firm* which does not have 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 who:
 - (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*;

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*; or
- (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

- 15.13.5 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*.

15.13.6 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.

15.13.7 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:

...

(14) ... ; ~~and~~

(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 that they must provide to the *FCA* on their *CBTL business* and their compliance with requirements imposed by Schedule 2 to the *MCD Order*; 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 (1) A *CBTL firm* must submit a duly completed consumer buy-to-let return to the *FCA*.

(2) The return referred to in (1) must be submitted:

- (a) 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*;
- (b) online through the appropriate systems accessible from the *FCA's* website; and

- (c) within 30 *business days* following the end of the reporting period.
- (3) The reporting period is the four calendar quarters beginning on 1 April.
- 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 16.21*.

...

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)
	In the reporting period	In the reporting year to date
CBTL loans in arrears of >1.5% of outstanding balance	_____	_____
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 calendar quarter. 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). We expect firms to submit a nil return if they have no data to report.

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

1 Lending

The number of CBTL loans reported should be at account level, rather than property level.

(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.

Accounts under a Receiver's control should be reported as in arrears where this is the case.

(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.) in the reporting period. It should not include all possession stock remaining unsold in the period. 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.

2 Annex 1G 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>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
<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 3.2G

The FCA's power to impose financial penalties is contained in:	

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

Schedule 4 Powers Exercised

...

Sch 4.1G

The following powers and related provisions in or under the <i>Act</i> have been exercised by the FCA 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 to the MCD Order.

...

1.2 Consumer awareness rules

Publishing and providing summary details, and information about the Financial Ombudsman Service

- 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 provided under article 7(1)(h) of Schedule 2 to the MCD Order; or

...

- 1.2.2A G If an MCD credit intermediary has, before or at the point of sale, provided an eligible complainant with appropriate information in a durable medium about their internal procedures for the reasonable and prompt handling of complaints pursuant to another rule, the MCD credit intermediary need not refer to the availability of that information again under DISP 1.2.1R(2)(b).

...

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 etc.	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>a 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:

...

(1C) CBTL business;

...

...

Activities by CBTL firms

- 2.3.2BA R The *Ombudsman* can consider a *complaint* under the *Compulsory 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 ~~24 April 2015~~ 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 ~~24 April 2015~~ 21 March 2016

...

The activities which were covered by the *Compulsory Jurisdiction* (at ~~24 April 2015~~ 21 March 2016) were:

- (1) for firms:

...

- (i) CBTL business;

...

- (3) ...

or any ancillary activities ... in connection with them;

- (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 ~~24 April 2015~~ 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*:

...

- (28) *advising on a home reversion plan* (article 53B);

- ~~(29)~~ *advising on a home purchase plan* (article 53C);
(28A)

- ~~(29A)~~ *advising on a regulated sale and rent back agreement* (article 53D);
(29)

(29A) *advising on regulated credit agreements for the acquisition of land (article 53DA)*

(30) *advising on syndicate participation at Lloyd's (article 56)*

...

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

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 4.4.31G*) and second charge bridging loans (see *PERG 4.4.1-AG*).

...

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~~ 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:

...

The exclusions ...

(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 for the acquisition of 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 for the acquisition of land or advising on a home finance transaction*:

...

(d) ... ; ~~and~~

(e) ... ; and

(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 for the acquisition of 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:

...

(3) ...;

(4) a *CBTL credit agreement* excluded as described in *PERG* 4.4.31G.

...

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* 4.4.31G and *PERG* 4.10B which refer to consumer borrowers.

...

Exclusion for certain consumer buy-to-let mortgage contracts

4.4.31 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).

4.4.32 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 (1) or (2) are met:

(1) (a) 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;

(b) 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

(c) 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;

- (2) the borrower is the owner of land, other than the land secured by the mortgage, which is
- (a) 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
- (b) 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). In addition, there ~~is an~~ are ~~exclusions~~ are exclusions where both the lender and borrower are overseas, which is referred to in *PERG 4.11* (Link between activities and the United Kingdom) and related to consumer buy-to-let lending, which is described in *PERG 4.10B*.

...

- 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 *administering regulated mortgage contracts*. 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). In addition, there ~~is an~~ are exclusions ~~exclusion~~ where both the administrator and borrower are overseas, which is referred to in *PERG 4.11* and 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 section 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 an *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 described 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* 4.4.32G 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 (8); 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



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