

AMI Factsheet: Consumer Credit Permissions

Introduction

This factsheet has been prepared by the Association of Mortgage Intermediaries as an overview of the consumer credit permissions that our members should typically hold as firms who advise on regulated mortgage contracts, consumer buy to let contracts, and unregulated buy to let contracts. We do not consider firms who undertake unsecured lending or see the provision of debt advice as part of their business. These would not fit within this factsheet terms of reference.

Firms should carefully consider their business models and the activity that they carry out, as the scenarios below are not a definitive list.

Overview

Debt counselling with no debt management limitation

This is likely to be the only consumer credit permission that firms should need to hold in respect of their regulated mortgage, consumer buy to let and unregulated buy to let businesses, e.g. advising a customer on consolidating their debts into a regulated mortgage contract. This is because the discussions which a broker will have with a customer might look like:

- First going through a detailed budget planner with the customer and identifying areas where the customer can save money on outgoings in order to increase repayments on pre-existing unsecured debt
- Then identifying that one credit card has a 0% interest rate and another will be paid off within 6 months
- As a result, recommending the customer does not consolidate these two credit cards into a new mortgage. The budget suggests the customer can repay both the first card before the expiry of the 0% period and the second card, as well as making payments on the new mortgage.
- The adviser does not settle or refinance the customers' debts, other than through the debt consolidation of the remaining unsecured debt that will take place in the new regulated mortgage contract.

In this scenario the broker is not undertaking debt management activity, but is undertaking debt counselling, so the debt counselling permission with no debt management is appropriate.

Debt management activity

If a broker advises on a customer's borrowing generally with a view to an individual entering into a particular debt solution or in relation to any such debt solution, with the regulated mortgage contract being one potential outcome, this would constitute debt management.

In assessing whether a proposed debt consolidation regulated mortgage contract is suitable for a customer, a broker (under [MCOB 4.7A.15R\(3\)](#)) is required to consider whether it would be more appropriate for the customer to negotiate an arrangement with their creditors rather than to take out the mortgage, where the

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customer is known to have payment difficulties. However MCOB 4.7A.15R(3) does not require the firm to advise on alternative debt solutions.

In relation to the non-consolidated debts, if the broker simply signposted the debtor to an authorised debt counsellor that was able to provide advice on the full range of options available to the customer, it would not constitute debt management activity.

Credit broking

There have been several changes made to legislation and the FCA rules since the implementation of the Mortgage Credit Directive. For example there is [no longer a need](#) to hold a credit broking permission in respect of advising on unregulated buy to let contracts.

[PERG 2.8.6CG](#) sets out that:

- “(3B) The regulated activities of arranging (bringing about) regulated mortgage contracts, making arrangements with a view to regulated mortgage contracts, arranging (bringing about) a home purchase plan and making arrangements with a view to a home purchase plan are excluded from credit broking.
- (3C) Also excluded from credit broking, when not excluded by (3A) or (3B), are activities which consist of effecting an introduction with a view to an individual entering into regulated mortgage contract or a home purchase plan, if the person to whom the introduction is made is an authorised person who has permission to:
- (a) enter into such an agreement as lender or home purchase provider; or
 - (b) make an introduction to an authorised person who has permission to enter into such an agreement as lender or home purchase provider.”

However, there are some mortgage contracts which constitute credit agreements and if firms carry out this activity it would constitute credit broking. [CONC 1.2.7G](#) sets out that:

- “(3) The agreements secured on land to which CONC may apply include the following agreements (unless the agreement in question, or activity in relation to it, is otherwise exempt or excluded):
- (a) an agreement under which the borrower is a relevant recipient of credit (within the meaning of article 60L of the Regulated Activities Order) but is not one or more individuals or trustees; for example, a partnership comprising two or three partners, one but not all of the partners in which is a body corporate; and
 - (b) an MCD article 3(1)(b) credit agreement secured on land, less than 40% of which is used as or in connection with a dwelling (whether by the borrower or anyone else) to the extent specified in CONC 1.2.8R.
- (4) Broking in relation to the above agreements may be credit broking under article 36A of the Regulated Activities Order, whether the agreement is regulated or exempt. There are also some other secured credit agreements which are exempt, but the broking of which may still constitute credit broking, because some exemptions are disregarded by article 36A of the Regulated Activities Order. One example is a loan of more than £25,000 entered into wholly or predominantly for the purposes of a borrower’s business and secured by a second or subsequent charge on the borrower’s home: such a loan is not a regulated mortgage contract because it is a second charge business loan (as defined by article 61A of the Regulated Activities Order), and is an exempt agreement by virtue of article 60C(3) of the Regulated Activities Order; article 36A(1)(d) and (4)(a) of the Regulated Activities Order disregards that exemption.”

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Debt adjusting

[PERG 2.7.8BG](#) sets out that debt adjusting activity “comprises:

- (1) negotiating with the lender or owner, on behalf of the borrower or hirer, terms for the discharge of a debt;
- (2) taking over, in return for payments by the borrower or hirer, that person's obligation to discharge a debt; or
- (3) any similar activity concerned with the liquidation of a debt;

when carried on in relation to debts due under a credit agreement or consumer hire agreement.”

So in the unlikely event that mortgage intermediaries are carrying out (1) or (2) as part of the advice given to consolidate debt into a regulated mortgage contract, they will need to hold this permission.

Exemptions from consumer credit permissions

AMI believes that certain activities should not require mortgage intermediaries to hold a consumer credit permission as intermediaries are already accountable under both the broader FCA principles and specific conduct rules. Firms currently however need a consumer credit permission because the current exemption from consumer credit activities for mortgage business does not (but should) cover the full scope of what members need to do in practice to look after customers.

Firms have to hold a consumer credit permission relating to debt consolidation due to the advice that is given around the debts that are *not* going to be consolidated into the mortgage. This is because the advice is not limited to that which is regulated under article 53A of the Regulated Activities Order (“advice on the merits of... entering into a particular regulated mortgage contract, or... varying the terms of a regulated mortgage contract”) but extends to simply advice about the liquidation of debts; i.e. debt counselling.

Therefore a strange position exists where firms could only be exempt from holding a consumer credit permission if they advised customers to consolidate all debts in every case (which would however likely mean contravening the suitability rules).

Summary and next steps

If advisers are, in relation to customers consolidating their debts into a regulated mortgage contract:

- only talking to customers about debts in the context of seeking to source a mortgage;
- not straying into any more detailed discussions than comparing one debt against another; and
- setting up referrals only when it is clear there is a need for the customer to get on top of their debt,

Then the debt counselling permission with no debt management limitation is likely to be sufficient.

Separately, if firms advise on certain mortgage contracts that could be classed as credit agreements (such as an MCD article 3(1)(b) credit agreement secured on land where less than 40% is used as or in connection with a dwelling, or a second charge mortgage of more than £25,000 which is predominantly for the purposes of a borrower’s business), then a credit broking permission is also likely to be needed.

Firms should however review the activities they carry out and whether the permissions they hold are appropriate.

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Update January 2018

Whilst the FCA has confirmed that the debt counselling with no debt management limitation remains an option for firms, any firms who do not currently hold this but are looking to vary their permissions will not be able to select this on the FCA Connect system. This can however be corrected by firms clicking the 'Add Non Standard Limitation' box to open up a free text box, and entering the wording:

Limited to counselling no debt management - This permission is limited to debt counselling with no debt management activity

The FCA has confirmed that there is no fee for firms to amend their limitation.

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