

## Regulation under the Consumer Credit Act: current changes and possible implications for members

### Summary

Consumer credit regulation will move on 1 April 2014 from the Office of Fair Trading (OFT) to the Financial Conduct Authority (FCA). The FCA will take over both the standards and enforcement of the Consumer Credit Act and related instruments.

- Some CII/PFS members *may* already be caught by the consumer credit regulation. If they give advice to the public, sole traders or small partnerships on anything to do with unsecured credit (applying for it, consolidating it, reducing it, or checking credit status); then they *may* need a consumer credit licence issued by the OFT.<sup>1</sup>
- HM Treasury and FCA have started consulting on the transition. Regulation will be similar in some respects and tougher in others.
- There will be an interim permission regime starting in April 2014 and members who currently hold a consumer credit licence will need to apply for this well in advance, or risk carrying on activities unlicensed.
- To encourage prompt take-up of this interim permission, the FCA have opened up an on-line application system, and are offering a 30% fee discounts to successful applications made prior to 30 Nov 2013.
- The OFT offers a group licensing regime, but the FCA will be scrapping this. However professionals that are not authorised by the FCA for some other activity (eg financial advice) will be able to get an exemption.

Timings: following a high level consultation that closed in May, the FCA will be publishing a consultation on more detailed rules this Autumn. This will close in the winter, and final rules will be drafted around March 2014.

### 1. Overview and background

The Consumer Credit Act (CCA) 1974 covers all activity related to lending and borrowing including credit and hire agreements except first-charge residential mortgages. It is a piece of primary legislation which has been amended several times in the last few years (notably 2006).

Further to the Government's regulatory reforms to bring all retail financial services conduct regulation under a single body, regulating consumer credit will move on 1 April 2014 from the OFT to the Financial Conduct Authority (FCA). The FCA will take over both the standards and enforcement of the CCA and related instruments.

---

<sup>1</sup> NOTE: This policy briefing is for general information purposes only and should not be used by members to assess their own compliance with any regulatory requirements. The CII shall not be liable for any reliance that members place in this briefing. Members wishing to obtain information and/or advice on their own situation should refer directly to the OFT, FCA or obtain legal assistance.

## 2. Existing consumer credit regulation and members

Some CII or PFS members are currently caught by the CCA regulation and have to hold a Consumer Credit Licence (CCL):<sup>2</sup>

- **The Act covers more than just retail consumers:** the title *Consumer Credit Act* is a bit of a misnomer, because in addition to retail consumers, the CCA also covers sole traders and small partnerships. Only limited companies and PLCs are out of the scope.
- **Licence holding is not just for selling credit:** there are currently nine CCL categories or permissions covering licensable credit activities, only one of which covers lending money. The others cover brokerage, debt adjusting, debt counselling, debt administration, and credit information services.

### Overall situation

If a firm gives advice to the public, sole traders or small partnerships (or acts on their behalf), on anything to do with unsecured credit (applying for it, consolidating it, reducing it, or checking credit status); then the firm *may* need a consumer credit licence. Firms not having one could be liable for criminal prosecution.<sup>3</sup>

### Financial advisers

This group is likely to need several categories of CCL if they provide any advice or services related to unsecured debt, and most should already be aware of this.<sup>4</sup> The following applies:

- **Advice on managing debt:** if the advice covers steps to manage debt under £25,000, then the adviser must hold the licence category E: Debt Counselling.
- **Introductions to firms that offer credit:** if they direct clients to other firms that offer credit products valued under £25,000, then the adviser must hold category C: Credit Brokerage.
- **Negotiations on consolidating debt:** if the adviser negotiates on behalf of clients, including challenging existing credit agreements or introducing clients to firms that take debt discharge obligations, then the adviser must hold licence category D: Debt Adjusting.
- **Checking credit ratings or obtaining credit status:** if the adviser checks a consumers' credit rating, or obtains a credit history report from a consumer credit reference agency on their clients' behalf, then category H Credit Information Services would be needed.

### Financial advisers: new issue of adviser charging

It is possible that financial advisers allowing their client to defer or spread the Adviser Charge could also be caught by the CCA as lending money, unless the transaction meets certain exemptions set out by the OFT.<sup>5</sup>

The situation arises when Adviser Charge is spread over time, in which case it *could* be construed as lending requiring CCL category A: consumer credit. There may be exemptions, and the OFT have published guidance.<sup>6</sup> For this licence category to *not* be required, the remuneration must be:

---

<sup>2</sup> The information in this section has been gathered from a variety of sources including: various sections of the OFT website on consumer credit licensing, [www.oft.gov.uk/OFTwork/credit-licensing/#.UgizDVITOMo](http://www.oft.gov.uk/OFTwork/credit-licensing/#.UgizDVITOMo) (accessed 7 Aug 2013); the Consumer Credit Act 1974 and its amendments (2004, 2006); the National Business Register website, "Do you need a Consumer Credit Licence?" [www.start.biz/nationwide/credit.php](http://www.start.biz/nationwide/credit.php) (accessed 7 Aug 2013).

<sup>3</sup> Please note that this is for general information purposes only and should not be used by members to assess their own compliance with any regulatory requirements. Members not completely sure of their own specific situation should refer directly to the OFT, FCA or obtain legal assistance.

<sup>4</sup> See for example, CII unit *CF1: Financial services, regulation and ethics*, Study Text (updated July 2012), pp.12.13-12.14.

<sup>5</sup> See for example, "APFA: Do you need a Consumer Credit Licence?" by Linda Smith, *MoneyMarketing*, 8 Nov 2012.

- without interest or other charges; *and*
- payable in 4 instalments or less; *and*
- payable within a 12 month period.

Although many advisory firms will already hold a CCL, they are unlikely to have this category. If in doubt, advisers may wish to apply to have their licence varied to add the new category.

### Mortgage advisers or brokers

Transacting and/or advising on loans secured on residential property are not caught by the CCA. However, as with other financial advisers, a CCL may be needed if any advice or transaction includes anything to do with unsecured debt under £25,000 (eg credit cards, personal loans, or current account overdraft facilities).<sup>7</sup>

### General insurance brokers

General insurance brokers that deal with companies or PLCs are not caught by the Consumer Credit Act, regardless of what sort of advice they give or services they carry out. However; if their clients are consumers, sole traders or small partnerships, they will need a CCL if they perform certain activities with them. For example:

- **Debt counselling:** if the broking involves advising clients on steps to manage debt of under £25,000 as part of their general finance arrangements, then they will need category E: Debt Counselling.
- **Introductions to firms that offer credit:** if they direct clients to other firms that offer credit products valued under £25,000, then the adviser must hold category C: Credit Brokerage.
- **Debt adjusting:** if the adviser negotiates on behalf of clients, including challenging existing credit agreements or introducing clients to firms that take debt discharge obligations.

## 3. Moving regulation from OFT to FCA

With effect from 1 April 2014, firms involved in consumer credit business will be regulated by the FCA. However this will be more than simply an administrative move from one regulator to another. The FCA began consulting in March 2013 on how this will work,<sup>8</sup> and have also recently published further information on its website.<sup>9</sup>

Overall, the FCA will apply five elements of its regulatory model to consumer credit, resulting in regulation that is stricter in some respects:

- **Conduct requirements and rules:** general matters of governance and integrity will fall under FCA high-level rules such as *Principles for Businesses* – which form the basis for many FCA enforcement actions.

---

<sup>6</sup> OFT guidance document: “Consumer Credit: Regulated and Exempt Agreements,” Nov 2010, pp.9-10.

<sup>7</sup> Source: various sections of the OFT website on consumer credit licensing [www.oft.gov.uk/OFTwork/credit-licensing/#.UgizDVITOMo](http://www.oft.gov.uk/OFTwork/credit-licensing/#.UgizDVITOMo) (accessed 7 Aug 2013); the Consumer Credit Act 1974 and its amendments (2004, 2006).

<sup>8</sup> Financial Services Authority consultation “CP13/7: High-level proposals for an FCA regime for consumer credit,” March 2013. Note that while this was published by the former FSA, it concerns the policies and activities of its successor the FCA. <http://www.fca.org.uk/news/consultation-papers/fsa-cp13-07-consumer-credit-regulation>. See also HM Treasury consultation, *A new approach to financial regulation: transferring consumer credit regulation to the Financial Conduct Authority*, Mar 2013 [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/221913/consult\\_transferring\\_consumer\\_credit\\_regulation\\_to\\_fca.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/221913/consult_transferring_consumer_credit_regulation_to_fca.pdf)

<sup>9</sup> FCA website, “Consumer credit: the differences between the scope of the Office of Fair Trading (OFT) and the FCA regimes,” [www.fca.org.uk/firms/firm-types/consumer-credit/scope](http://www.fca.org.uk/firms/firm-types/consumer-credit/scope) (accessed 22 Aug 2013).

- **Authorisation:** the process for obtaining authorisation will be more rigorous, evolving into something more similar to the way the FCA authorises firms for other types of activities. There will be an interim authorisation process for the first two years of the regulation, and then two tiers based on level of risk and amount of activity.
- **Scope of regulation:** this is one area where the Government plans to “keep the scope of consumer regulation broadly the same under the FSMA regime, including replicating existing provisions under the CCA.”
- **Supervision:** generally, the FCA will have greater powers to investigate and sanction, and an approach that is more preventative and proactive than the OFT. There will be an Approved Persons regime with Controlled Functions, as with other areas the FCA regulates.
- **Enforcement & redress:** this will be significantly greater than under the OFT, including powers to ban individuals, publicly censure firms’ activities, seek injunctions and freezing orders, carry out investigations involving search warrants, impose consumer redress, and ultimately to bring disciplinary, civil and even criminal proceedings.

## 4. FCA consumer credit authorisation: two tiers

The FCA consumer credit authorisation will have a full regime involving a core and a limited permission tiers; and a two-year interim permission system for firms who already have an OFT consumer credit licence.

### Full regime

The full regime will be established on 1 April 2014, and will be divided into two tiers depending on risk and extent of permission. This comprises the core regime covering:<sup>10</sup>

- **Consumer credit lending:** including personal loans, credit card lending, overdrafts, pawnbroking, hire purchase, conditional sales etc. But excluding lending by sellers of goods and non-financial services where there is no interest or charges.
- **Credit broking:** Including introducing consumers to lenders. But excluding broking by sellers of goods and non-financial services as a secondary activity (unless the broking is carried on in a consumer’s home on more than an occasional basis e.g. double-glazing sellers selling credit to the consumer in their home).
- **Debt adjusting:** helping people with their debt problems by taking over their debts or negotiating on their behalf. But excluding not-for-profit debt adjusting.
- **Debt counselling:** including advising people on discharging specific debts. But excluding where carried out by a not-for-profit body.
- **Debt administration and collection:** carrying out activities relating to consumer credit on behalf of a lender.
- **Credit information services:** obtaining information about someone’s credit record or helping them change their credit record. But excluding not-for-profit credit information services.
- **Credit reference agency:** collecting information about consumers’ financial standing to inform the decisions of consumer credit firms.
- **Operating an electronic system in relation to lending:** the new regulated activity proposed by the Government concerning peer-to-peer platforms.

The second “limited permission” tier will cover activities deemed to be lower risk, and is clearly aimed at non-financial services firms that are caught by the consumer credit requirements:

- debt counselling with debt adjusting and/or credit information services, when carried out by a not-for-profit-body;

---

<sup>10</sup> FSA CP13/7, March 2013, see Note 8 above.

- secondary credit brokerage by sellers of goods and non-financial services (except firms that routinely carry out the sale in the customers' home);
- sellers of goods and services who only provide credit or other financial accommodation directly to purchasers (excluding hire purchase or conditional sale) with no interest or charges; and
- debt counselling, debt-adjusting or credit information services, when carried on as ancillary activities by a person already in the lower risk category.

It is unclear whether financial advisers, mortgage advisers or general insurance brokers would fall into the second lower-risk tier. However a reading of the parameters here suggests that because these practitioners' main business is within financial services, they would be subject to the full authorisation tier.<sup>11</sup>

Further information on how the FCA will approach regulating consumer credit, including the appointed representatives and approved persons regimes, is available on its website.<sup>12</sup>

**Licence fees for full licensing:** the FCA announced in a Policy Statement published on 30 August that it will be introducing a programme of rebates "to ensure that the cost of the transfer of regulation is appropriate".<sup>13</sup> The regulator will consult in October 2013 on how these rebates would work.

### Interim permission for existing CCL-holders

The FCA has established an interim permission regime for firms that already possess a CCL on 31 March 2014.<sup>14</sup> The regulator has written to CCL-holder firms, warning them that interim permissions will *not* be automatic:<sup>15</sup>

- **Firms that have a valid OFT licence:** will have to apply for interim authorisation from the FCA. Failing to do this will result in the firm operating without a licence when the OFT one expires on 31 March 2014. This is a criminal offence for which the firm will be liable for prosecution.
- **Discounted fee for firms applying before November:** applications are open now, and those completed before 30 November will be charged a discounted fee of £105 for sole traders (£245 for other firms). After 30 November, the regular fees will apply: £150 for sole traders (£350 for other firms).<sup>16</sup>
- **Firms can use the FCA's on-line interim permission system:** to encourage firms to exploit the discounted interim fees, the FCA have set up an on-line application process.<sup>17</sup> The page also offers a step-by-step guide, frequently-asked questions and other material on consumer credit authorisation.
- **Firms that do not already have a CCL:** will have to obtain a CCL by 31 March 2014, or apply for full FCA authorisation when that opens.

More information on the interim permission system can be found in the FSA consultation Chapter 3. It includes information on the limitations to interim permissions:

---

<sup>11</sup> "Do you need a consumer credit licence? Don't ask the FCA or OFT," by Donia O'Loughlin, Financial Adviser, 24 July 2013.

<sup>12</sup> [www.fca.org.uk/firms/firm-types/consumer-credit/scope](http://www.fca.org.uk/firms/firm-types/consumer-credit/scope)

<sup>13</sup> FCA Policy Statement 13/7 *FCA regime for consumer credit: interim permission fees*, 30 Aug 2013, p.7. [www.fca.org.uk/your-fca/documents/policy-statements/ps13-07](http://www.fca.org.uk/your-fca/documents/policy-statements/ps13-07)

<sup>14</sup> See FSA CP13/7, March 2013, see Note 8 above, Chapter 3, pp.22-29.

<sup>15</sup> Joint letter from FCA and OFT to consumer credit licensees, "Consumer credit regulation is changing: you need to act now," 15 July 2013. Forwarded to CII Customer Service from a member. See also [www.fca.org.uk/firms/firm-types/consumer-credit](http://www.fca.org.uk/firms/firm-types/consumer-credit) (accessed 3 Sep 2013).

<sup>16</sup> FCA Policy Statement 13/7 (see note 12 above), p.7.

<sup>17</sup> [www.fca.org.uk/firms/firm-types/consumer-credit/consumer-credit-interim](http://www.fca.org.uk/firms/firm-types/consumer-credit/consumer-credit-interim) (accessed 3 Sep 2013).

- such firms can only approve financial promotions related to the activity for which the permission applies;
- firms with interim permission will not be able to appoint Appointed Representatives ('ARs').
- the interim regime will not last beyond 1 April 2016 at the latest, and the FCA has said that it intends to begin directing firms to apply for full authorisation from 1 October 2014, with different deadlines for different categories of firm.

## 5. Group licences and professional bodies

There exists a group licence regime under the OFT for charitable organisations and professional bodies. The Treasury and the FCA have taken a view on how this would operate under the FCA regulation.

### Existing OFT group licensing

The OFT Group Licence system allows certain professional bodies that are able to assess members' consumer credit compliance are able to hold a group licence on their members' behalf.<sup>18</sup> The CII has never applied for such a Group Licence on behalf of its membership, for the following reasons:<sup>19</sup>

OFT criteria	CII situation
1. The not-for-profit status and main business activities of the members in question are assessed and taken into account by the OFT using a risk-based approach.	Notwithstanding the CII's own not-for-profit and public interest professional body status: <ul style="list-style-type: none"> <li>• its members are for-profit; and</li> <li>• their main business activities are in financial services.</li> </ul> Therefore, the OFT would apply the strictest possible assessment.
2. The body must have appropriate systems and controls in place for ensuring that group members meet the OFT's overall "Fitness Test" on an initial and ongoing basis. <sup>20</sup> <ul style="list-style-type: none"> <li>• This is to carry out activities for <i>each licence category</i> being applied for.</li> <li>• For a financial adviser group membership, the CII would have to apply for a group licence covering the 4-5 categories described in section 2 above.</li> </ul>	The CII does not possess sufficient resources or legal powers to assess the fitness of its members to conduct CCA activities. Instead the FCA carries out this function. <ul style="list-style-type: none"> <li>• This activity would involve initial assessment and ongoing monitoring of over 21,500 financial adviser members in meeting the requirements for 4-5 consumer credit licence categories.</li> </ul>
3. Suitable procedures must be in place within the body to allow the exclusion from cover of unfit members.	For members demonstrating unfitness to conduct consumer credit activities, the CII does not possess legal powers to stop them from practising. Only the FCA has this function. <ul style="list-style-type: none"> <li>• While the CII possesses a disciplinary regime to enforce its Code of Ethics, CPD and other aspects of membership, the sanction does not prevent individual members from continuing to practise.</li> <li>• It lacks the legal powers and/or resources to prevent an individual from practising, or to bring legal proceedings for noncompliance.</li> </ul>

<sup>18</sup> Consumer Credit Act 1974 (amended 2006), section 22(5).

<sup>19</sup> See OFT guidance, "Group licensing regime: Guidance for consumer credit licence holders and applicants," April 2008 (updated August 2011).

<sup>20</sup> See Consumer Credit Act 1974, section 25A; and OFT, "Consumer credit licensing: general guidance for licensees and applicants on fitness and requirements," Jan 2008 [www.oft.gov.uk/shared\\_of/business\\_leaflets/credit\\_licences/oft969.pdf](http://www.oft.gov.uk/shared_of/business_leaflets/credit_licences/oft969.pdf)

## Group licensing under the FCA

The Treasury and FCA assessed the group licensing scheme in their consultations on the regulatory transition and have concluded that:<sup>21</sup>

- **The group licensing scheme will be abolished:** not-for-profit and non-financial services firms will have to seek authorisation under the low-risk limited permission tier described above.
- **Professional bodies seeking group authorisation:** will have to use the FCA's Part 20 exemption for professions that are not otherwise regulated by the FCA. This allows members of certain professional bodies who are already overseen by their own professional body (eg the Institute of Chartered Accountants of England & Wales).

The Government has also made clear that, to qualify for the latter Part 20 exemption, there will be two additional provisions for professional firms carrying out consumer credit activities:

- **Incidental to business:** the consumer credit activity must be *incidental* to the firm's professional business. If credit activities are in any way linked to the firm's normal business (for example, arguably, giving holistic financial advice), then the firm will need to be fully authorised by the FCA.
- **Cannot be FCA authorised for some other activity:** the Part 20 regime is only available to firms who are not already authorised by the FCA. As the FCA explains, "The carrying on of a regulated activity by a firm cannot be exempt under FSMA Part 20 if the firm is required to be authorised for other regulated activities."<sup>22</sup> So if a firm is authorised under FSMA to conduct financial advice, it cannot be exempt from FSMA to give debt advice.

It is therefore unlikely that the CII would be successful in applying for a FSMA Part 20 exemption for financial advisers, mortgage advisers or general insurance brokers; because those members are already authorised under FSMA to conduct those activities.

## 6. Next Steps

Sept 2013 – 31 Mar 2014	From September, firms can register for 'interim permission'.
End-September 2013	Second consumer credit Consultation Paper, covering all remaining aspects of the regime, including the conduct rules and rebates.
October 2013 onwards	The FCA runs free workshops around the country to explain the new changes
Autumn/winter 2013	Consultation on plain language guidance to help firms and other stakeholders understand and navigate the new regime.
March 2014	Feedback on responses to the second consumer credit Consultation Paper, including made rules.
March 2014	Final version of plain language guidance for firms and other stakeholders.
March 2014	Fees proposals for 2014/15
31 March 2014	All OFT-issued consumer credit licences expire
1 April 2014	FCA takes over regulation of consumer credit

**Laurence Baxter**  
**CII Group Policy & Public Affairs**  
**September 2013**

<sup>21</sup> HM Treasury consultation (see note 8 above), p.26, para.3.19.

<sup>22</sup> FSA CP13/7 (see note 8 above), p.46, para.5.26.