

10/9

Financial Services Authority

# Mortgage Market Review: Arrears and Approved Persons

Feedback to CP10/2 and final policy

June 2010



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This Policy Statement reports on the main issues arising from Consultation Paper 10/2 – *Mortgage Market Review: Arrears and Approved Persons* (January 2010) and publishes final rules for mortgage arrears and near-final rules for the approved persons regime for mortgage advisors and arrangers.

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# List of acronyms used in this paper

Consultation Paper	(CP)
Policy Statement	(PS)
Mortgage Market Review	(MMR)
Arrangement to Pay	(AtP)
Mortgages and Home Finance: Conduct of Business sourcebook	(MCOB)
Early Repayment Charges	(ERCs)
Key Facts Illustration	(KFI)
Payment Card Industry Security Standards Council	(PCISSC)
Cost benefit analysis	(CBA)
Third-party administrators	(TPAs)
Controlled function	(CF)
Online Notifications and Applications system	(ONA)
Statements of Principle and Code of Practice for Approved Persons	(APER)
Fit and proper test for approved persons	(FIT)
Perimeter Guidance	(PERG)
Significant Influence Functions	(SIFs)
Criminal Records Bureau	(CRB)



# 1 Introduction

- 1.1 In January this year we published the first Mortgage Market Review (MMR) Consultation Paper (CP), CP10/2,<sup>1</sup> setting out our proposals for clarifying and strengthening our existing arrears rules and extending the approved persons regime to home finance business.
- 1.2 The first part of this Policy Statement (PS) sets out the feedback we have received in response to our proposals relating to the current arrears rules. These proposals were in response to the high levels of poor practice in this area, identified from our ongoing thematic review of lenders' arrears handling practices. As a result of that review, seven firms were referred to enforcement because of past poor practice. It was clear that our high-level approach had not sufficiently protected consumers and so we proposed to strengthen our rules to ensure better outcomes for consumers in future.
- 1.3 The second part of this Policy Statement sets out the feedback we have received in response to our proposal to extend the approved persons regime to those individuals advising on, arranging or entering into home finance business. We are also extending the regime to those individuals who are responsible for overseeing compliance in this sector.
- 1.4 These changes aim to reduce the risk of unsuitable individuals operating within the industry and to make those that do accountable for their actions. Allowing us to sanction, where appropriate, those that fail to meet our requirements. These changes will contribute to a reduction in the amount of fraud in the mortgage market by either deterring rogue individuals from entering the home finance market or from continuing to operate in it. It will also lead to increased transparency enabling consumers to identify individuals who have been approved by us.

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1 [www.fsa.gov.uk/pubs/cp/cp10\\_02.pdf](http://www.fsa.gov.uk/pubs/cp/cp10_02.pdf).



# Changes to current mortgage arrears rules

- 2 Overview
- 3 Summary of responses to proposed changes to current mortgage arrears rules
- 4 Cost benefit analysis

## Part 1 – Appendix 1: Final rules

# 2 Overview

- 2.1 As we explained in our Consultation Paper, Mortgage Market Review: Arrears and Approved Persons (January 2010), our review of lenders' compliance has demonstrated that many consumers are not being treated fairly when they fall into payment difficulties.
- 2.2 As a result, we proposed:
- clarifying our existing requirements on the continued application of a monthly arrears charge where a customer has entered into an Arrangement to Pay (AtP);
  - converting Mortgage and Home Finance: Conduct of Business sourcebook (MCOB) 13 forbearance guidance into rules and introducing a reference to the various government schemes in place to help borrowers in payment difficulties;
  - clarifying our existing requirements on the practice of charging Early Repayment Charges (ERCs) on arrears fees and charges and the interest levied on the arrears charges;
  - adding a new rule to require telephone calls to form part of the arrears records kept by firms and extending the overall record-keeping period from 12 months to three years; and
  - clarifying our existing requirements that payments from customers be allocated to clearing missed monthly payments, leaving charges to be paid later.
- 2.3 Part 1 of this paper sets out the feedback and our final policy for the above proposals and includes the final rules and guidance.

## **What does this Policy Statement contain?**

- 2.4 Chapter 3 sets out feedback on the responses we received to CP10/2 and the decisions we have made as a result.
- 2.5 Chapter 4 sets out our responses in relation to the cost benefit analysis.

- 2.6 Part 1 – Appendix 1 contains the final rules and guidance and a transitional provision for the new telephone-recording rule and extension of the overall record-keeping period.

## **Who should read this paper?**

- 2.7 This paper will be of interest to mortgage lenders, mortgage administrators, relevant trade bodies and consumer representatives.

## **Responses to consultation**

- 2.8 We received 47 responses to CP10/2 from a range of consumer representatives, trade bodies, lenders, third-party administrators and professional bodies.
- 2.9 In general, responses were supportive of the proposals. A number of practical issues were raised, along with a great deal of constructive and helpful feedback. These responses have helped to shape the final policy and rules.
- 2.10 In response to the feedback received, we have changed our proposals in some areas. These changes have been prompted both by consultation responses and through discussions with firms and trade bodies following publication of CP10/2. The most significant changes relate to:
- the time limit for retaining records; and
  - amendments to the layout of MCOB 13.3.4R (now MCOB 13.3.4AR) and other minor changes to the published draft rules.
- 2.11 Further detail about these changes is set out in our response to feedback received under each question in Chapter 3.
- 2.12 As stated in CP10/2, as part of the wider MMR, we are carrying out a review of charging practices in the mortgage market more generally. Feedback to this CP has identified additional issues around the charging practices of some firms, particularly around the way in which lenders apply ERCs. This has highlighted the need for further work in this area.

## **Implementation and next steps**

- 2.13 For new rules where we are requiring the recording of telephone calls and extending the overall record-keeping period from 12 months to three years, we will be providing a transitional provision. After taking into consideration the responses received, we spoke with industry representatives to ascertain how feasible a six-month transitional period would be. From the feedback we received, the majority of firms felt that a six-month transitional period was an achievable deadline.

- 2.14 With regard to these new requirements, firms may seek a waiver and/or modification under SUP 8.3 if they believe that the requirement is unduly burdensome (see question 5); for example, if they only have a very small number of mortgage customers in arrears.
- 2.15 As stated in the January CP, we will not be providing transitional provisions in any respect of the proposals where we are merely clarifying our original requirements.
- 2.16 Of all the clarifying proposals within CP10/2, the proposal regarding ERCs has been the most contentious element. This proposal clarified our existing requirements i.e. it did not change the standards or obligations set out in our existing rules and does not represent a change in our underlying policy intent. Firms should already be calculating ERCs in accordance with our rules. Indeed, the GMAC-RFC case in October 2009 (where the inclusion of arrears charges within the ERC was one of the failings) should have given firms further indication of the position under the current rules. Furthermore, CP10/2 plainly stated (on page 14 paragraph 4.22) that there would be no transitional period, because we consider this to be a clarification not a change in policy.
- 2.17 From responses received, and following discussions with firms, we believe that many firms are not only adding arrears charges within ERCs but many other charges. As a result we do not propose to proceed with the clarification to MCOB 12.3.1R as we feel this might potentially confuse firms' understanding of the requirements further. We will look at ERCs further in our wider review of charging practices later in the year. In the meantime we expect firms to be excluding arrears charges or the interest on those charges from the outstanding balance on which the ERC is calculated.
- 2.18 We have had discussions with a number of firms about manual workarounds for ERC calculations. As the majority of respondents stated that the amount of borrowers affected is small, we believe that manual workarounds are possible. If, however, firms believe that they are not be compliant they should speak to their supervisor.

## **CONSUMERS**

This PS will be of interest to consumers who have an FSA-regulated mortgage and consumer bodies representing the interests of these consumers. In particular, consumers should note the forbearance options that we require firms to consider when dealing with customers in financial difficulty and the prohibition of some arrears-charging practices.

# 3 Summary of responses to proposed changes to current mortgage arrears rules

Q1: Do you agree with our proposal to clarify our requirements to prohibit lenders from levying an arrears charge where customers have a performing arrangement to repay the arrears in place?

- 3.1 There was overwhelming support for our proposals to prohibit the levying of arrears charges where customers have a performing arrangement in place.
- 3.2 Although generally supportive, lenders called for greater clarity over what constituted an arrangement to pay (AtP) and what would represent adherence to this arrangement. Non-deposit taking lenders challenged our proposals, commenting that an additional cost is justified when monitoring AtPs. These respondents felt strongly that management of an account did not stop when the borrowers were consistently meeting their repayments.
- 3.3 Consumer representatives were concerned that our proposals had not gone far enough to set out clear rules, evidential requirements or guidance on how firms can set arrears charges that are a fair reflection of the additional administration costs faced by lenders. They were also concerned about the number of individuals who, for one reason or another, were unable to set up an arrangement to re-pay.

**Our response:** We have amended the Handbook provisions to provide greater clarity about what constitutes an arrangement to pay (AtP) (see MCOB12.4.1A E).

We would not expect firms to charge an arrears fee if an AtP was set up at a concessionary level (by this we mean an amount that would not cover full payment of the arrears over the set period) as this still constitutes an AtP. We would also not expect firms to charge an arrears fee if the customer overpays in any period, as long as payments are at or above the agreed amount.

If borrowers choose to make payments by a method that requires some administrative intervention on the part of the firm (for example, where a borrower pays by credit/debit card as opposed to collection by Direct Debit) then as long as the charge is a reasonable reflection of the administrative cost, firms may levy this.

Those customers who are unable to set up an AtP because making a monthly commitment is not possible, will be helped through our requirement that, in future, payments must be allocated first to missed payments and not to charges (see question 7).

Q2: Do you agree with our proposals to convert current MCOB guidance to rules?

- 3.4 Respondents broadly agreed with the proposals. Lenders and trade associations raised concerns over firms' flexibility to deal with borrowers once guidance has been converted to rules. Lenders also raised concerns that arrears handlers would potentially be giving advice and that there would be a need for each option in MCOB 13.3.4AR1 (a-e) to be considered on every contact with the customer. Trade associations and lenders also raised questions over what would constitute a record to demonstrate compliance following the conversion of guidance to rules.
- 3.5 Some firms asked for clarification about how the requirements would apply to securitised loans and whether the requirements would be applied retrospectively.
- 3.6 A number of firms were concerned about the open-ended nature of the right to repossess a property as a result of the conversion from guidance to rules. This was especially the case where a firm has given a borrower the opportunity to effect a sale themselves.
- 3.7 Finally, lenders and trade associations raised concerns that changing the requirements from guidance to rules would not necessarily result in the improved treatment of customers.

**Our response:** We have added guidance to aid understanding of what are now rules (see new MCOB 13.3.4C G). We do not expect each forbearance option to be explored at every stage of interaction with the borrower, but that the appropriate option is chosen based on their individual circumstances. We would normally expect that every appropriate forbearance tool has been used before repossession action begins. However, as we have said previously, repossession action may be the most appropriate course for some consumers, depending on their individual circumstances.

Concern was also raised that setting out specific forbearance options would stifle innovation. The forbearance options are not an exhaustive list and we would encourage firms to consider any other options that may be more appropriate for a borrower's individual circumstances.

When a firm assesses the individual needs of the borrower, the appropriate solution will most likely fall out of the conversation with the customer. In the course of this it is unlikely that a firm will put itself in the position of giving a personal recommendation (hence providing regulated advice). Where more than one option is relevant given the customer's circumstances, information will be given to them about the options that are available and the customer will choose which is most appropriate for their circumstances.

The change from guidance to rules should not change a firm's obligation to keep an adequate record of its dealings with the customer.

In terms of the issues raised around securitisation, we expect a firm to adopt the same approach to forbearance for borrowers with mortgages that have been securitised as for borrowers whose mortgages remain on the firm's books. Securitisation covenants should not constrict a firm's ability to treat its customers fairly by exercising appropriate forbearance strategies.

In response to feedback regarding the right for a firm to repossess a property after initially agreeing that a customer can try to effect a sale themselves, we have amended the wording in MCOB 13.3.2AR (5) to state that a 'reasonable' time can be allowed.

We recognise that changing rules alone will not necessarily achieve an improved level of arrears handling. Our intensive and intrusive supervision of firms' practices will continue to help ensure customers in payment difficulties are treated fairly.

**Q3:** Do you agree that regard to government schemes should be included as a potential forbearance option?

- 3.8 The majority of respondents agreed in principle with our proposal, but raised a number of concerns over the drafting of MCOB 13.3.4R (now MCOB 13.3.4AR). It was felt that the rules should be clearer in recognising that lender participation in government schemes is voluntary and may be subject to change in the future. Lenders, it was said, should be providing information to borrowers only on the schemes that they participate in and not forced to consider all available schemes or have to give advice or comment on the appropriateness of such schemes.
- 3.9 Consumer groups felt that the rules could go further by including other available options as well as the government schemes.
- 3.10 Several respondents raised concerns over the delays that such schemes (and the third parties involved) can create, as they did not wish to see them used as an excuse by borrowers for delaying repossession or other action. It was felt that clear and sensible timescales should be set for borrowers to explore and confirm if such a scheme is available.

**Our response:** In light of the helpful responses received, a number of revisions have been made to the drafting of MCOB 13.3.4AR. These changes make it clear that lenders only need to consider the schemes that they choose to participate in. The rule MCOB 13.3.4BR will also make it clear that lenders only need to make borrowers aware of the schemes and of where further information can be obtained.

We will not prescribe an exact timescale for consideration of forbearance schemes, as decisions over eligibility will be out of the borrower's hands once they have applied. A lender should allow a reasonable period of time based on the borrower's circumstances.

**Q4:** Do you agree with our proposal to use guidance to clarify our current requirements prohibiting the inclusion of arrears charges and accrued interest on the charges within ERCs?

- 3.11 The majority of respondents agreed with the principle behind our proposal, but raised a number of detailed points. The first of the three main points was concerned with existing terms and conditions that set out what the lender will or will not include under the ERC. Firms were unclear whether our requirements overruled their terms and conditions or whether they would apply from a certain date.

- 3.12 The second point raised by a large number of respondents concerns the time needed to make changes to lenders' systems and the potentially high cost involved. It was felt that this would be disproportionately high compared with the small number of borrowers affected and the small savings they would make.
- 3.13 The final major point concerns clarification of how firms address the practical issues around ERCs. In particular, firms asked us to clearly define arrears charges as some charges relate to other services. The examples given included a returned direct debit, unpaid ground rent or service charges that the lender pays to avoid forfeiture of a lease, solicitors' costs and fees for changing to interest only. Firms also wanted clarity around when the ERC proposals would apply.

**Our response:** This proposal was merely clarifying existing requirements.

The charges rules (MCOB 12.3.1R) clearly state that a regulated mortgage contract cannot be used to impose an ERC, other than one that is a reasonable pre-estimate of the costs as a result of the customer repaying the mortgage early. This means that the ERC (which the lender will calculate at the start of the contract and set out in the Key Facts Illustration (KFI) both as a cash example and as an indication of the maximum figure recoverable) must be directly attributable to early repayment of the principal and interest. As we are not changing our current requirements, firms should already be calculating ERCs in accordance with our rules.

We would similarly expect lenders' terms and conditions to reflect the existing requirements.

As a result of the responses received, and following discussions with firms, we do not propose to proceed with the clarification to MCOB 12.3.1R. We feel this might potentially confuse firms' understanding of the requirements further. We will look at ERCs further in our wider review of charging practices later in the year. In the meantime we expect firms to be excluding arrears charges or the interest on those charges from the outstanding balance on which the ERC is calculated.

Trade bodies have pressed strongly for a transitional period to allow firms time to implement systems changes to meet this requirement. However, we are not altering the existing requirements on firms. Action was taken against GMAC-RFC in October 2009<sup>2</sup> for (among a number of other breaches of our requirements) including arrears charges in ERCs. We made it clear in CP10/2 in January 2010 that we did not propose to allow a transitional period for this requirement. Those firms who do not have systems that are already compliant, should be speaking to their supervisor.

Firms asked for clarity around whether missed payments could be included within the ERC. These are payments that a lender should have expected to receive from a borrower and, therefore, these payments and the accrued interest on these payments are a legitimate element of the outstanding balance, which the ERC can be charged against.

Firms also raised questions around the application of an ERC once capitalisation has occurred. We expect capitalisation to be carried out only in those rare cases when it can be shown to be appropriate to the individual circumstances of the customer and not

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We fined GMAC-RFC £2.8m and required it to pay customers redress of up to £7.7m for unfair arrears charges: [www.fsa.gov.uk/pubs/final/gmac\\_rfc.pdf](http://www.fsa.gov.uk/pubs/final/gmac_rfc.pdf).

automatically. In cases where capitalisation or a product transfer does occur, the borrower has agreed to that new borrowing amount, and therefore, the lender has the right to charge the ERC on this new lending amount.

We do not propose to define arrears charges as this might encourage 'gaming'. We believe that a common sense approach should be adopted in determining what constitutes an arrears charge, i.e. is it a charge being levied against the customer because they are in arrears?

**Q5: Do you agree with our proposals to implement record-keeping requirements for telephone calls?**

- 3.14 Many respondents agreed with the principle of having a complete record of dealings with borrowers in financial difficulty. Lenders raised concern over the proportionality of retaining calls until the shortfall is repaid and some practical issues about the implementation of call-recording systems.
- 3.15 A number of firms and trade associations questioned whether this new requirement conflicted with their current obligations under the Payment Card Industry Security Standards Council (PCISSC) for the recording and retention of credit/debit card data.
- 3.16 Some firms who have branch networks were concerned about meetings with customers and how these need to be recorded. Similarly, they questioned whether calls to branches would need to be recorded.
- 3.17 Smaller firms and building societies felt the benefits were disproportionate to the costs of implementing call recording.
- 3.18 One firm also raised the issue of proportionality of this requirement covering regulated business loans.

**Our response:** In response to feedback, we have revised our proposals and will now require call recordings to be kept for three years from the date the record is made instead of three years after the shortfall has been repaid. There was some confusion about which calls need to be captured under this requirement. The intention behind our proposals is to capture calls that discuss the sums outstanding and the ways in which borrowers can resolve their payment difficulties. We do not wish to capture calls between firms and solicitors or field agents where the firm is doing no more than giving instructions to these third parties.

It is also not our intention that this requirement should cover conversations held in the borrower's home or in branches. Records of these face-to-face meetings will continue to be covered by the general record-keeping requirements in MCOB 13.3.9R (1). If calls are received by branches within large organisations, we would expect those calls to be routed back to a central arrears-handling area to be recorded. Firms must also ensure that the calls routed from different areas of their business are recorded.

We have spoken to the Payment Card Industry Security Standards Council (PCISSC) and they have confirmed that the recording of calls is permitted. The current PCISSC requirements are superseded by regulation imposed by us. However, firms are required to have robust systems and controls to ensure the adequate security of this data. We understand from our discussions with the PCISSC that there are increasing numbers of systems/products on the market, with modest associated costs, which remove the card data before a record is retained. This is something that firms may wish to explore further.

Responses to CP10/2 have highlighted that solicitors commencing proceedings against borrowers with payment difficulties are being instructed to discuss payment problems with borrowers and in some cases are even given mandates within which to agree repayment terms. Any calls between the solicitor (or any other third party similarly instructed by the firm) and the borrower, where the repayment difficulties and possible solutions are discussed, would also have to be recorded.

On a more fundamental point, we are concerned that solicitors undertaking arrears management activities may be acting outside of the course of their profession and may therefore be carrying on the regulated activity of administering regulated mortgage contracts, which they would need to be authorised to do. We are following this up with the Solicitors Regulatory Authority.

In response to proportionality concerns from very small firms and building societies (e.g. one respondent had two arrears cases), these firms can apply for a waiver as necessary. Therefore, if a firm considers that their individual circumstances make the new rule requirements unduly burdensome, they may apply for a waiver or modification under SUP 8.3. Any application must meet the waiver requirements that the rule is unduly burdensome or would not achieve the purpose for which it has been made and borrower's whose interests are protected by the rule, would not be put at undue risk.

If a customer with a regulated business loan experiences payment difficulties, the risk to them of losing their home is just as real as that of a customer with a residential mortgage. Therefore, we do not believe that regulated business loans should be carved out of this requirement.

**Q6:** Do you agree with the extension of the period for all arrears records from 12 months to three years?

- 3.19 The majority of respondents agreed with the principle of increasing the record-keeping period. However, many firms raised issues around the practicalities and the necessity to keep records for three years after the shortfall has been paid off. Firms expressed concern that keeping records for this long could result in records needing to be retained for the length of the loan, which could be anything up to 30 years. The majority of respondents felt that records should be kept for a three-year period and doubted the benefit of keeping records for a longer period.
- 3.20 Some firms doubted their ability to meet the provisions within MCOB that require records to be readily accessible, typically within two business days.

**Our response:** We have revised our approach to the length of time records must be kept. We originally proposed that calls should be retained until the shortfall has been paid off. We have changed this to three years from the date the record is made. This should enable firms to implement a simpler and cheaper recording system. Following further industry discussion a six-month transitional period has been provided for the implementation of the increase in the retention of all records.

Some firms expressed concern that we would require hand-written call notes to be retained on their systems and linked to the call recording via a sophisticated system. As long as firms can provide call recordings with a date and time on them that corresponds with hand-written call notes that can be retrieved in a reasonable period, this is acceptable.

Firms must aim to ensure that records are readily accessible (typically within two business days – see MCOB 2.8.3G). However, we realise this may not be feasible for all call recordings. We would be prepared to take a more pragmatic approach depending on the quantity of the call recordings requested.

**Q7:** Do you agree with our proposal to clarify our current requirements for borrower payments to be allocated to paying off arrears before charges?

- 3.21 There was a good level of support for this proposal from a variety of groups, including consumer representatives, trade bodies, and lenders. It was considered that this would help ensure consumers are treated fairly and help them at a time when they were most vulnerable.
- 3.22 Some stakeholders wanted to see further clarification of the proposal, including (but not limited to) the relative priority of monthly payments and arrears, what priority is given to charges not with respect to arrears, how it would apply to capitalisation, and how it would work for existing contracts.
- 3.23 While many lenders noted that they were already complying with this proposal, considering it good practice, some firms highlighted that this proposal would involve significant cost for them to implement.

**Our response:** This requirement assists borrowers who are least capable of paying, especially in cases where they are unable to set up an AtP due to their financial position.

We have added clarity within the rule (MCOB 12.4.1.B R) that payments must first be allocated to missed payments and not charges.

In terms of capitalisation, the approach to be adopted is similar to that in response to question 4. Firstly, we would expect capitalisation to occur in limited circumstances and only when appropriate. In cases where it is the most appropriate solution, then the borrower has agreed to borrow a new amount and therefore payments under the new arrangement would be allocated in the usual manner.

So, in future, for all contracts (i.e. existing and new) we expect payments to be allocated first towards missed payments and not charges.

**Q8:** Would our proposals to change the rules affect your ability to improve consumer understanding of the arrears statement?

- 3.24 Overall, stakeholders did not suggest that our proposals would significantly affect firms' ability to improve consumer understanding of arrears statements.
- 3.25 Many respondents, including firms, noted the importance of fair and transparent statements for consumers and acknowledged that there was more that firms could do to make statements more understandable. Firms qualified this by noting that any requirement to do so should include an appropriate transition period.

**Our response:** Easily understandable arrears statements are an integral element of treating customers who fall into arrears fairly. We are pleased to note that most stakeholders do not think our rule changes will adversely impact on firms' ability to provide more understandable statements.

We encourage firms to work towards clearer arrears statements.

Q9: What should the timescales be for implementing call recording and retention?

- 3.26 As stated in question 5, the responses we received called for records to be retained for three years from the date the record was made rather than three years after the shortfall has been paid off. Most firms asked for 12 months to make this change, with one asking for up to 24 months.

**Our response:** In light of the responses received we have revised the retention period for call recording to three years from the date on which the record was made. We believe this will not only help ensure the fair treatment of consumers in arrears but provide a simpler rule that firms will be able to implement more quickly.

There is a balance to be struck between the timescales that firms have provided against the necessity to improve customer outcomes in this area. These changes are necessary to achieve benefits at a time in the economic cycle when arrears levels are at their highest.

After taking into consideration the responses received, we spoke with industry representatives to ascertain how feasible a six-month transitional period would be. From the feedback we received the majority of firms felt this was an achievable deadline. Therefore, we believe a six-month transitional period strikes a balance between giving firms time to implement call recording and the need to reduce consumer detriment from poor arrears handling practices.

Q10: Do you have any comments on our CBA?

- 3.27 Respondents who did comment on the cost benefit analysis (CBA) were broadly in agreement. However, there were some comments raised about the proportionality of our requirements for the calculation of Early Repayment Charges (ERCs). These comments related to the costs due to the level of savings a customer would make.
- 3.28 Some firms raised an issue about the questionnaire that was used to gather data about the call recording requirements not matching the published proposals. There was also a view that we should reassess the telephone call recording costs if the length of time was restricted to three years, as proposed by many respondents.

**Our response:** The majority of issues raised are covered in Chapter 4.

On the issue about the questionnaire not reflecting the policy for retaining records until the shortfall had been paid off, we are satisfied that the questionnaire accurately reflected the policy intent. The detailed questions requested data/information related to record keeping for the period of the shortfall.

In terms of the proportionality of the telephone call recording requirement, firms can, if appropriate, apply for a waiver or modification (see question 5).

Q11: Do you agree with the compatibility statement?

- 3.29 Very little comment was provided. In general, respondents from across the market were supportive of our proposals.
- 3.30 However, two concerns were raised. Firstly, that the introduction of MCOB 12.4.1BR would not add sufficient incremental benefit, compared with the number of borrowers who would be impacted. Secondly, firms were concerned with our approach to record keeping. Lender respondents felt that this would increase, rather than decrease, the financial crime concerns.

**Our response:** With regard to the allocation of payments, we believe that this requirement will provide benefits to those borrowers in the most straitened financial circumstances who are unable to set up an AtP. Ensuring that payments are first allocated to missed monthly payments, leaving charges to be paid later, will help reduce arrears charges by shortening the length of default and the consequent negative impacts.

With regard to concerns around financial crime, we have spoken to the Payment Card Industry Security Standards Council (PCISSC). They have confirmed that the recording of calls is permitted as stated in question 5. Although the recording of telephone calls will provide a record of the transaction for firms and us to help identify fraud, this new requirement does bring with it the need for card data to be kept securely. This will require firms to have robust systems and controls to ensure this. As indicated above, we understand from our discussions with the PCISSC that there are increasing numbers of systems/products on the market, with modest associated costs, which remove the card data before a record is retained. This is something that firms may wish to explore further.

# 4 Cost benefit analysis

- 4.1 Several respondents commented that costs imposed on firms would lead to costs being recovered from consumers in other areas of business. We accept this and would repeat the statement made in the cost benefit analysis (CBA) included in CP10/2 that some consumer detriment may only be reduced in the short term since firms may recover lost revenue by introducing new charges or fees for the same or other consumers, unless competition or regulation prevents this. However, we expect net benefits will be delivered over the long term.
- 4.2 Some respondents also expressed the view that the extent of the costs passed through to other consumers should be quantified in the cost benefit analysis. Though we agree that in principle that it would be desirable to capture the distributional aspect of this transfer from consumers to firms, as a transfer it would not affect the net benefit of the proposals. Also, we lack data to do this and would be required to intensively engage firms to obtain the requisite information. Given the intensive work required to do this for both ourselves and firms, we do not believe it would be a proportionate use of our resources to carry this out.
- 4.3 Additional or updated cost estimates were provided by some respondents in their feedback (for example for systems changes for the early repayment charge calculations). However, since these were within the range of costs received in the survey for the original cost benefit analysis, they did not necessitate revision to the cost and benefit analysis in CP10/2.

## **Guidance on the continued application of an arrears charge where a customer has entered an AtP**

- 4.4 In our response to question 1 we clarified what counts as an AtP. This clarification does not imply changes to the cost benefit analysis published in CP10/2.

## **Converting MCOB 13 from guidance into rules, introducing reference to government schemes**

- 4.5 In our response to question 2 we clarified that firms' obligations to keep adequate records is not changed in the move from guidance to rules. Given this, revisions to the cost benefit analysis published in CP10/2 are not required.

## **Guidance on Early Repayment Charges (ERCs) being applied to arrears fees and charges**

- 4.6 A couple of respondents questioned the assumption, made in our calculations of the consumers affected by ERCs, that all repossessions will face an ERC. Others commented that since the clarification will affect all redemptions with an ERC (not just repossessions) the analysis needs updating in this respect. In response, we would reiterate points made in the CBA. Firstly, we are aware that not all repossessions will face an ERC (for example, repossessions that fall outside the fixed term/introductory period). Also, some customers who switch while in arrears may face an ERC on arrears fees and charges. However, given the data limitations we faced, we took repossession figures as a reasonable estimate of the number of ERCs.

## **Rules to require telephone calls to form part of arrears records and extending the record keeping period from one year to three**

- 4.7 We have revised our approach to the length of time records must be kept. We originally proposed that calls should be retained until the shortfall had been paid off. We have changed this to three years from the date the record is made. Since this change provides a specific length of time for call recordings to be kept and limits it to three years, it reduces the burden of the change on firms relative to a requirement to record calls for three years from when arrears are cleared. Therefore, costs stated in the original CBA, which assumed the more burdensome requirement, will tend to overstate the costs under this revised rule.
- 4.8 One respondent commented that installing telephone call recording equipment in a large number of branches would be disproportionately costly, since call recording equipment would have to be installed in multiple centres to record telephone conversations to branches, in particular those from business customers who are in arrears for loans secured on residential properties. Given this high cost, they indicate they would instead be led to centralise their call systems. This, they believe would be undesirable for customer service reasons. In response to this, we appreciate the value of non-centralised communications between consumers and branches. However, we believe that firms should be able to find centralised methods, with less costly telephone recording systems, that would enable them to meet the requirement, while maintaining direct connections to branches (for instance by routing calls from to business customers to branches through a centralised calling system from where the call could be recorded). Since this kind of approach is along the lines of what was envisaged in the original cost benefit analysis, we do not believe this feedback necessitates a revision to the cost benefit analysis.
- 4.9 A trade association criticised the telephone recording requirement rule change as disproportionate for smaller firms. They argued for a separate CBA for smaller firms. In response to this, and as set out in our response to question 5, smaller firms will be allowed to apply for a waiver from the telephone recording requirement. The cost of producing a waiver application would be much less than the costs detailed in the original cost benefit analysis. Therefore, this should ensure that costs faced by smaller firms in respect of this change are less than those detailed in the cost benefit analysis.

## **Guidance on prioritisation of payments to arrears outstanding over accrued arrears charges**

- 4.10 One respondent commented that contractual arrangements with third party administrators (TPAs) were negotiated in the expectation that their costs would be covered by arrears. This would require switching to alternative means (other than arrears charges) to recoup costs. However, they did not provide details of these alternative means or estimates of the incremental costs.
- 4.11 Another respondent stated that reprioritising arrears payments would not be consistent with their existing contractual arrangements and they would face potentially significant costs as a result. In response to this, we believe that most firms should have a way to negotiate contractual arrangements to address this. We have not received information from firms which would allow us to estimate these costs.
- 4.12 One TPA stated one-off costs for following this guidance of £1.6m for system development, implementation resource and reporting costs. We acknowledge this as an additional cost of following the guidance.
- 4.13 In CP10/2 a correction should be made to paragraph 6.52 describing the benefits for the prioritisation of payments to arrears charges. The original loan should read £50,000. This change does not affect other numbers nor the analysis presented. If the original loan was £100,000, as stated in CP10/2, and the borrower had £700 monthly funds available for mortgage costs (doubled to scale up with the loan) but where monthly arrears charges and interest are unchanged (£40, 6% respectively) then the hypothetical consumer would save a total of £50 by having payments directed first to arrears. If the borrower had £600 monthly funds then they would save £266.67 by having their payments being directed first to arrears.
- 4.14 One respondent commented that our hypothetical example was liable to mislead. We disagree with this. The example made clear the rationale for the guidance, while also stressing the limits of the analysis - in particular that in the absence of detailed information about the population of affected consumers, we are not in a position to estimate actual benefits.

# Final rules

Mortgage Arrears Instrument 2010

## MORTGAGE ARREARS INSTRUMENT 2010

### **Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
  - (2) section 149 (Evidential provisions);
  - (3) section 156 (General supplementary powers); and
  - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purposes of section 153(2) (Rule-making instruments) of the Act.

### **Commencement**

- C. This instrument comes into force on 25 June 2010.

### **Amendments to the Handbook**

- D. The Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) is amended in accordance with the Annex to this instrument.

### **Citation**

- E. This instrument may be cited as the Mortgage Arrears Instrument 2010.

By order of the Board  
24 June 2010

## Annex

**Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook  
(MCOB)**

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

MCOB 12.4.1R, which has not changed, has been included to aid the reader.

4.7.4 R For the purposes of *MCOB* 4.7.2R:

...

- (3) if a *firm* is dealing with an existing *customer* in *arrears* and has concluded that there is no suitable *regulated mortgage contract* for the purposes of *MCOB* 4.7.2R, the *firm* must nonetheless have regard to *MCOB* ~~13.3.2E(1)(a), (e) and (f)~~ 13.3.2AR(1), (5) and (6) (see also *MCOB* ~~13.3.4G(1)(a) and (b)~~ 13.3.4AR(1)(a) and (b)).

**12.4 Arrears charges: regulated mortgage contracts**

12.4.1 R (1) A *firm* must ensure that any *regulated mortgage contract* that it *enters into* does not impose, and cannot be used to impose, a charge for *arrears* on a *customer* except where that charge is a reasonable estimate of the cost of the additional administration required as a result of the *customer* being in *arrears*.

- (2) Paragraph (1) does not prevent a *firm* from *entering into a regulated mortgage contract* with a *customer* under which the *firm* may change the rate of interest charged to the *customer* from a fixed or discounted rate of interest to the *firm's* standard variable rate if the *customer* goes into *arrears*, providing that this standard variable rate is not a rate created especially for *customers* in *arrears*.

12.4.1A E The imposition of a charge for *arrears* on a *customer* who is adhering to an arrangement under which the *customer* and the *firm* agree that the *customer* will make payments of a set amount per month (or other agreed period) on agreed dates may be relied upon as tending to show contravention of *MCOB* 12.4.1R (1).

12.4.1B R When a *customer* has a payment shortfall in respect of a *regulated mortgage contract*, a *firm* must ensure that any payments received from the *customer* are allocated first towards paying off the balance of the shortfall (excluding any interest or charges on that balance).

...

### 13.3 Dealing fairly with customers in arrears: policy and procedures

13.3.1 R ...

- (2) A *firm* must put in place, and operate in accordance with, a written policy (agreed by its respective *governing body*) and procedures for complying with (1). Such policy and procedures must reflect the requirements of MCOB 13.3.2AR and MCOB 13.3.4AR.

~~Policy and procedures: content~~

13.3.2 E (1) ~~A *firm* should ensure that its written policy and procedures include:~~

- ~~(a) using reasonable efforts to reach an agreement with a *customer* over the method of repaying any payment shortfall or *sale shortfall*, in the case of the former having regard to the desirability of agreeing with the *customer* an alternative to taking possession of the property;~~
  - ~~(b) liaising, if the *customer* makes arrangements for this, with a third party source of advice regarding the payment shortfall or *sale shortfall*;~~
  - ~~(c) adopting a reasonable approach to the time over which the payment shortfall or *sale shortfall* should be repaid, having particular regard to the need to establish, where feasible, a payment plan which is practical in terms of the circumstances of the *customer*;~~
  - ~~(d) granting, unless it has good reason not to do so, a *customer's* request for a change to:
 
    - ~~(i) the date on which the payment is due (providing it is within the same payment period); or~~
    - ~~(ii) the method by which payment is made;~~~~and giving the *customer* a written explanation of its reasons if it refuses the request;~~~~
  - ~~(e) giving consideration, where no reasonable payment arrangement can be made, to the *customer* being allowed to remain in possession to effect a sale; and~~
  - ~~(f) *repossessing* the property only where all other reasonable attempts to resolve the position have failed. [deleted]~~
- (2) ~~Contravention of (1) may be relied on as tending to show contravention of MCOB 13.3.1R(2). [deleted]~~

13.3.2A R A firm must, when dealing with any customer in payment difficulties:

- (1) make reasonable efforts to reach an agreement with a customer over the method of repaying any payment shortfall or sale shortfall, in the case of the former having regard to the desirability of agreeing with the customer an alternative to taking possession of the property;
- (2) liaise, if the customer makes arrangements for this, with a third party source of advice regarding the payment shortfall or sale shortfall;
- (3) allow a reasonable time over which the payment shortfall or sale shortfall should be repaid, having particular regard to the need to establish, where feasible, a payment plan which is practical in terms of the circumstances of the customer;
- (4) grant, unless it has good reason not to do so, a customer's request for a change to:
  - (a) the date on which the payment is due (providing it is within the same payment period); or
  - (b) the method by which payment is made;and give the customer a written explanation of its reasons if it refuses the request;
- (5) where no reasonable payment arrangement can be made, allow the customer to remain in possession for a reasonable period to effect a sale; and
- (6) not repossess the property unless all other reasonable attempts to resolve the position have failed.

...

13.3.3A R In complying with MCOB 13.3.2AR, a firm must give a customer a reasonable period of time to consider any proposals for dealing with the payment difficulties.

~~13.3.4~~ G ~~In relation to using reasonable efforts to reach an agreement with a customer over the method of repaying any payment shortfall or sale shortfall, customers:~~

- ~~(1) should be given a reasonable period of time to consider any proposals for payment that are put to them; in addition, and depending on the individual circumstances, a firm may wish to do one or more of the following in relation to the regulated mortgage contract or home purchase plan with the agreement of the customer:~~
  - ~~(a) extend its term; or~~

- (b) ~~change its type; or~~
  - (c) ~~defer payment of interest due on the *regulated mortgage contract* or of sums due under the *home purchase plan* (including, in either case, on any *sale shortfall*); or~~
  - (d) ~~treat the payment shortfall as if it was part of the original amount provided; [deleted]~~
- (2) ~~should be given adequate information to understand the implications of any proposed arrangement; one approach may be to provide information on the new terms in line with the *annual statement provisions*. [deleted]~~

13.3.4A R In complying with MCOB 13.3.2AR(6):

- (1) a firm must consider whether, given the individual circumstances of the customer, it is appropriate to do one or more of the following in relation to the *regulated mortgage contract* or *home purchase plan* with the agreement of the customer:
- (a) extend its term; or
  - (b) change its type; or
  - (c) defer payment of interest due on the *regulated mortgage contract* or of sums due under the *home purchase plan* (including, in either case, on any *sale shortfall*); or
  - (d) treat the payment shortfall as if it was part of the original amount provided (but a firm must not automatically capitalise a payment shortfall); or
  - (e) make use of any Government forbearance initiatives in which the firm chooses to participate;
- (2) a firm must give customers adequate information to understand the implications of any proposed arrangement; one approach may be to provide information on the new terms in line with the *annual statement provisions*.

13.3.4B R A firm must make customers aware of the existence of any applicable Government schemes to assist borrowers in payment difficulties in relation to *regulated mortgage contracts*.

13.3.4C G Firms should note that the list of options to consider set out at MCOB 13.3.4AR(1) is not exhaustive. The FSA would expect firms to be able to justify a decision to offer a particular option.

13.3.4D G In the FSA's view, in order to comply with Principle 6, firms should not agree to capitalise a payment shortfall save where no other option is realistically

available to assist the *customer*.

- 13.3.5 G ~~In relation to using reasonable efforts to reach an agreement with a *customer* over the method of repaying any payment shortfall or *sale shortfall*, a *mortgage lender* should not automatically capitalise *arrears*. [deleted]~~

...

Record keeping: arrears and repossessions

- 13.3.9 R (1) A *mortgage lender* or *administrator* must make and retain an adequate record of its dealings with a *customer* whose account is in *arrears* or who has a *sale shortfall*, which will enable the *firm* to show its compliance with this chapter. That record must include a recording of all telephone conversations between the *firm* and the *customer* which discuss the sums due.

- (2) A *mortgage lender* or *administrator* must retain the record required by (1) for ~~a year~~ three years from the date ~~on which the relevant payment shortfall or *sale shortfall* was cleared~~ of the dealing.

- 13.3.10 G The record referred to in *MCOB* 13.3.9R should contain, or provide reference to, matters such as:

- (1) the date of first communication with the *customer* after the account was identified as being in *arrears*;
- (2) in relation to correspondence issued to a *customer* in *arrears*, the name and contact number of the employee dealing with that correspondence, where known;
- (3) the basis for issuing tailored information in accordance with *MCOB* 13.7.1R;
- (4) information relating to any new payment arrangements proposed;
- (5) the date of issue of any legal documents;
- (6) the arrangements made for sale after the *repossession* (whether legal or voluntary); and
- (7) the date of any communication summarising the *customer's* outstanding debt after sale of the *repossessed* property;
- (8) the date and time of each call for the purposes of *MCOB* 13.3.9R(1).

...

**Transitional Provisions**

**TP 1.1 Transitional Provisions**

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
13	<u>MCOB 13.3.9R</u>	<u>R</u>	<u>A firm which complies with MCOB 13.3.9R as it applied on 24 June 2010 need not comply with MCOB 13.3.9R as it applies from 25 June 2010.</u>	<u>25 June 2010 to 25 December 2010</u>	<u>25 June 2010</u>

...

**Schedule 1 Record keeping requirements**

...

Sch 1.3 G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
<u>MCOB 13.3.9R</u>	Dealings with <i>customers in arrears</i> or with a <i>mortgage shortfall debt</i>	<del>Details of all communication</del> <u>dealings (including a recording of all telephone conversations)</u> with the <i>customer</i> ; information relating to any repayment plan; date of issue of any legal proceedings; arrangements made for sale of a <i>repossessed</i> property; and the basis of any tailored information where the loan is for a business purpose.	<del>The date on which the customer's account first falls into arrears</del> <u>The date of the dealing</u>	<del>One year</del> <u>Three years</u> from the date on which the record is made <del>relevant payment shortfall or mortgage shortfall debt is cleared</del>

# Changes to approved persons regime for mortgage advisors and arrangers

- 5 Overview
- 6 Summary of responses to the proposed extension of the approved persons regime to mortgage advisors and arrangers
- 7 Approval process and implementation
- 8 Cost benefit analysis

**Part 2 – Appendix 1:** Individual Approval Form requirements

**Part 2 – Appendix 2:** Near-final rules

# 5 Overview

- 5.1 In January 2010 we published our Consultation Paper (CP), CP10/2, *Mortgage Market Review: Arrears and Approved Persons*.<sup>3</sup> In this part of the Policy Statement we summarise the feedback we received to the second part of the CP.
- 5.2 We consulted on extending the approved persons regime (the regime) so that it will apply to those individuals advising on, arranging or entering into home finance business.<sup>4</sup> We propose to do this through a new customer function (CF31 (home finance business)). We are also looking to extend the compliance oversight function (CF10) to this sector.
- 5.3 Our declared outcome for these proposals is to reduce mortgage fraud, to enable individuals engaged in ‘relevant activities’<sup>5</sup> to be tracked and to apply a range of sanctions for misbehaviour by those individuals.

## Responses and our final policy approach

- 5.4 The consultation period for CP10/2 closed on the 30 April 2010. We received 45 responses from trade associations, professional bodies, regulated firms of various sizes and consumers. We are grateful to all the respondents for taking the time to provide feedback.
- 5.5 The majority of the respondents broadly supported our proposal to extend the regime to all advisors and arrangers in mortgage intermediaries, as long as adequate supervision and enforcement action were taken against non-compliant individuals. They agreed that our proposal would deal with rogue individuals and further assist the fight against mortgage fraud, as well as improve the profile of mortgage advisors.

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3 [www.fsa.gov.uk/pubs/cp/cp10\\_02.pdf](http://www.fsa.gov.uk/pubs/cp/cp10_02.pdf). We issued an erratum in February 2010 providing greater clarification on the individual functions are caught by proposals. [www.fsa.gov.uk/pubs/cp/cp10\\_2%20erratum.pdf](http://www.fsa.gov.uk/pubs/cp/cp10_2%20erratum.pdf)

4 Firms and individuals will need to consider the Sale and Rent Back Policy Statement, which is due to be published at the same time as this PS, as our policy to extend the approved persons regime will also apply to those individuals undertaking Sale and Rent Back activities. [www.fsa.gov.uk/pubs/policy/ps10\\_08.pdf](http://www.fsa.gov.uk/pubs/policy/ps10_08.pdf)

5 See SUP 10.10.8R-10.10.13G for a complete list of which activities will be caught.

- 5.6 There was less support for the application of the proposals to lenders' staff, particularly those arranging mortgages (i.e. undertaking non-advised sales). The feedback, principally from the lenders themselves, argued that the extension of the regime in this way would not be proportionate.
- 5.7 Those consumer bodies that responded to our consultation were fully supportive, commenting that our proposals would be of great benefit to both consumers and firms alike and that they hoped the industry would welcome the extension of the regime despite the associated costs.
- 5.8 We intend to proceed with all our approved persons proposals having further refined the scope of who is caught.

### **Our rationale**

- 5.9 Introducing regulation understandably leads to concerns. Some firms are concerned that we will be second guessing decisions already taken by management, that our approval process could lead to staff already carrying out these activities being rejected, or that our proposals may impact existing business structures. Other concerns are that our proposals go wider than necessary to address the market failure, as well as raising some practical implementation issues. We are sensitive to these concerns.
- 5.10 We believe the regime is the right tool for addressing the need to reduce fraud in this sector but that we should apply it in a risk-based and proportionate way. We aim to demonstrate this in our policy approach, as set out in this PS. For example, the disclosure of a criminal record or adverse credit history would not in itself be an automatic bar to approval, but failure to disclose almost certainly would be.

### **Why have we adopted this policy approach now?**

- 5.11 A concern was raised about extending the regime before concluding the wider Mortgage Market Review, and the discussion over what constitutes an advised or non-advised sale. The issue raised was that this could necessitate amending the application of the regime shortly after being introduced.
- 5.12 Although that policy is still being developed, we do not believe our proposals on advised or non-advised sales will have a material impact on those individuals we are currently proposing to bring within the regime. We, therefore, see no reason to postpone this extension.

### **Who is affected?**

- 5.13 Chapter 10 of CP10/2 described the activities that will be caught by our policy. The refinements we are making for non-advised sales – to exclude those solely engaged in activities where no new money is advanced – are described in Chapter 6 and in SUP 10.10.9R to 10.10.13G in our rules.

## **Next steps**

- 5.14 Earlier this month we launched our new Online Notifications and Applications system (ONA). The use of this system will be a key element in successful implementation of our policy. However, systems changes will be necessary as a result of this policy. At present we do not have a confirmed date for completion of those changes, though we are planning for a 31 March 2011 commencement date. In other words this is the date we are planning to start accepting applications, subject to implementation of the systems changes. We are, therefore, publishing near final rules with this PS to allow firms sufficient time to prepare for implementation.
- 5.15 We hope to publish the final rules, including the definitive implementation date, in September 2010.
- 5.16 We intend to set up a dedicated page on our website later this year to provide firms and individuals with more detailed information regarding the implementation process.

## **Why should I submit my application or notification within the specified time period?**

- 5.17 We recognise that a large number of individuals will be affected by our policy. To ensure as little disruption as possible is imposed on the industry, we have designed our transitional arrangements so that any firm submitting a complete<sup>6</sup> application within the specified time period can continue to undertake the relevant activities (as described above) until we have determined the application. An illustrative timetable can be found in paragraph 7.52.

## **Who should read this Policy Statement?**

- 5.18 This section of the PS will be of particular interest to firms and individuals undertaking home finance activities.

## **Structure of the Policy Statement**

- 5.19 In Chapter 6 we summarise the feedback we received on each of the ten proposals put forward as part of the consultation and give our responses. We explain that, through discussions with the industry since the CP was published, we have continued to clarify the scope of our proposals so as not to capture those where there is little scope for, or risk, of fraud. In Chapter 7 we give greater clarity on implementation issues and in Chapter 8 we consider the cost issues raised by the industry. Appendix 1 includes information about which application form should be used under what circumstances and Appendix 2 contains the near final rules and guidance.

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6 See Chapter 7 for details of what constitutes a 'complete' application.

## Consumers

- 5.20 We expect our policy to lead to increased transparency which will enable consumers to identify individuals who have been approved to carry out the activities of advising, arranging or entering into home finance business. Our policy will also enable us to identify and sanction, where appropriate, those undertaking home finance activities and make this information publicly available on the FSA Register.<sup>7</sup>

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<sup>7</sup> The FSA Register is a public record of all authorised financial services firms, individuals and other bodies which fall under the FSA's regulatory jurisdiction.

# 6 Summary of responses to the proposed extension of the approved persons regime to mortgage advisors and arrangers

## Introduction

- 6.1 This chapter summarises the feedback we received to the ten proposals set out in part two of CP10/2.<sup>8</sup>
- 6.2 The following section summarises the feedback on the first three proposals, together with our response.

Q12: Do you agree with our proposal to extend the regime, specifically a new customer function (CF31), to include all individuals who currently, or in the future, advise on home finance transactions?

Q13: Do you agree with our proposal to extend the regime, specifically a new customer function (CF31), to include those individuals who currently, or in the future, arrange (bring about) home finance transactions whether on behalf of an intermediary firm or a home finance provider, as described in paragraph 10.2?

Q14: Do you agree that it is appropriate to extend the regime, specifically a new customer function (CF31), to include those individuals who currently, or in the future, arrange (enter into) home finance transactions on behalf of a provider, as described in paragraph 10.2?

## Summary of responses

- 6.3 Those who agreed with question 12 believed our proposal would, in principle, increase consumer confidence, further assist the fight against mortgage fraud, prevent rogue individuals from entering the market and track individuals to ensure that they cannot operate elsewhere if they are found to be non-compliant. Others,

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8 [www.fsa.gov.uk/pubs/cp/cp10\\_02.pdf](http://www.fsa.gov.uk/pubs/cp/cp10_02.pdf)

while supporting the application of the regime as long as adequate supervision and enforcement action were taken against non-compliant individuals, did not want those already carrying out one or more relevant activity reassessed by us against our fit and proper criteria.

- 6.4 Slightly more than half of the 39 responses we received to question 13 were in favour. question 14 was intentionally made ‘greener’ in the consultation as we were keen to hear the industry’s views on whether individuals who arrange (enter into) home finance transactions on behalf of a lender should be covered by our proposals. We received 40 responses, with 14 respondents supportive of our proposal. The lenders sought clarification about which functions would be caught, as this could potentially bring a large number of back-office staff into the regime.

### **Mortgage intermediaries**

- 6.5 While mortgage intermediaries supported our desire to improve standards and to increase transparency, they did not support the assessment of individuals who are already carrying out one or more relevant activities against our fitness and propriety criteria. They believed only certain elements of our individual approval process should be applied to these individuals, e.g. providing transparency through implementing a ‘register’ to track individuals. They were concerned that our assessment could exclude individuals with minor adverse history from entering the industry.
- 6.6 They were strongly of the view, however, that if the proposals were implemented they should apply to both intermediary and lender firms alike, whether the individuals operated on an advised or non-advised basis.
- 6.7 They questioned whether the desired outcome could be achieved by only requiring one of the proposed controlled functions. For example, they suggest that the CF31 could be applied to advisors and arrangers without an individual approved for a CF10. Alternatively, we could apply the CF10 only, without approving advisors and arrangers for CF31.
- 6.8 In addition, they suggested we already held sufficient enforcement powers to prohibit individuals who are not approved, as we have shown in the past and, therefore, our proposal was not justified.

### **Lenders**

- 6.9 Lenders supported the application of the regime to mortgage intermediaries, but not to their own staff (specifically those undertaking non-advised sales). They believed the regime was unjustified for this part of the sector. Lenders accepted that there was scope to commit mortgage fraud by their advisors, but considered the potential was greatly reduced where lenders sold their own products.
- 6.10 Lenders raised concerns about the proportionality of imposing significant initial and on-going post-authorisation costs and considered the true cost to the lenders outweighed the benefits. They also said their staff were already subject to a set of robust recruitment checks and ongoing training and competence monitoring.

- 6.11 Building societies, however, supported bringing all advisors in the industry into the regime, but disagreed with bringing in arrangers, e.g. those who were involved in non-advised sales within lenders.
- 6.12 Some questioned our cost benefit analysis (CBA) underpinning the proposal to extend the regime, arguing that it did not fully reflect the potentially increased costs, even after having taken account of lender firms' lower risk-profile for mortgage fraud.
- 6.13 Some lenders suggested that it was mortgage intermediaries rather than the lending community where fraud and dishonesty tend to manifest themselves. They suggested it would be more proportionate for us to apply the regime to the intermediary market in the first instance and then look at whether it was necessary to apply the same regime to lenders at a later date.
- 6.14 They asked for a commitment on how we intended to monitor approved persons after authorisation before we implemented any proposals

### **Issues on scope raised by lenders**

- 6.15 Respondents wanted clarity on which roles we intended to capture within the scope of the regime. They asked us to exempt from the regime those individuals who were involved with business lending, since business customers were typically more financially aware and often had their own professional advisors. Clarity was also wanted on whether supervisors of CF31s (those undertaking advised and non-advised sales) would be within the scope of the proposals.
- 6.16 There were particular concerns on question 14 over whether our proposals would inadvertently capture back office/administrative functions. We were asked whether these would include additional borrowing, transfers of equity cases, switching and 'porting' a mortgage contract. We were also asked to make it clear that this rule would not extend to those individuals involved in the underwriting and administrative process, but only to those in the sales process.
- 6.17 Lenders welcomed the clarification we offered in our erratum (see footnote 1 above) that back office and/or non-customer facing staff and those involved in post-completion activities would not be caught. They did, however, ask for a tighter definition from us on this.

### **Other comments**

- 6.18 Respondents were concerned about experienced candidates, who had previously been assessed as competent to carry out a relevant activity, failing to gain approval.
- 6.19 One respondent suggested introducers and those who did not perform upfront sales functions should also be caught by the regime.

**Our response:** We have considered the feedback to these questions carefully and continue to believe the approved person regime should be extended in line with our original proposals.

Our response to issues raised by mortgage intermediaries: While we understand concerns over assessing individuals already undertaking one or more relevant activities against our fitness and propriety criteria (which prompted the suggestion of a 'register' approach), allowing individuals un-vetted entry means that consumers would continue to have no assurance about the honesty and integrity of their advisors or arrangers. Nor does applying the CF10 on its own or the CF31 on its own achieve the desired outcome.

Where it appears to us that an individual is not fit and proper, we can prohibit them. This allows us to protect customers and other parties from the risk of future harm. However, the power to prohibit does not allow us to regulate the day-to-day conduct of an individual. By requiring certain individuals to be approved, they will be required to comply with our Statements of Principle and Code of Practice for Approved Persons (APER) throughout their life as an approved person. Additionally, where appropriate, we will be able to impose a range of sanctions including imposing fines directly on the individual misbehaving. This is only possible if the individual is an approved person.

Our response to issues raised by lenders: In our CP we stated that, in 2008, the Association of Chief Police Officers concluded that all those involved, including lenders, have a role to play in reducing opportunities for mortgage fraud and providing a consistent level of protection for consumers. To apply our proposals to intermediaries but not to lenders could lead to the risk of individuals who do not demonstrate acceptable standards to gain approved person status (in the intermediary sector) entering the home finance market through the lenders.

While we welcome the fact that lenders have thorough recruitment and vetting processes in place, we point out that some aspects of our assessment of an individual's fitness and propriety, go beyond the scope of lenders' assessments of their employees. The obligation in FSMA is on us to be satisfied that the individual is fit and proper. Section 5 (Fitness and Propriety) of our Individual Approval Form A sets out the range of subject matter that we consider will help us determine an individual's honesty, integrity and competence as set out in our Handbook (the Fit and Proper test for Approved Persons (FIT)). Additionally we have access to a wide range of sources which enable us to cross check and verify information provided to us by firms and individuals on the approved persons application form. Individuals approved under the regime are subject to APER throughout the life of their approval.

**Our response to CBA-related issues:** We deal with the issues raised with costs in Chapter 8 of this PS. Although all firms would incur costs associated with gaining approved persons status under our new policy, these proposals should have little additional impact on firms and individuals who already conduct their business in an appropriate manner. The impact will be felt most by firms and individuals who do not currently demonstrate acceptable standards. They will either have to improve their conduct to gain and maintain approved persons status or their application for approved persons status will not be approved. To the extent that this policy is effective, the benefits of keeping unsuitable individuals out of the home finance sector will be realised.

## **Other clarification**

### **Scope**

We have revisited the definition of which individual functions will be caught and have amended our rules accordingly. We believe that this goes some way towards meeting the lenders' concerns.

- CF31 will not cover the functions which take place after the application by the customer for a home finance transaction unless the person concerned is also involved in the upfront sales process. Therefore, the regime will not apply to those engaged in processing, underwriting, or administration activities.
- We have further tightened the definition of which individuals will require approval for a CF31 to exclude all transactions where no new monies are advanced (to reflect our original intention). So, an individual will be exempt from requiring approval for CF31 if the home finance transaction they are dealing with does not involve new monies being advanced.
- For further clarification, arrears handlers dealing with forbearance measures, those involved in switching products or alteration to the method of repayment or the mortgage term, removing or adding a party to the mortgage contract or 'porting' would not be caught by the regime. In each case this is as long as no new monies are advanced. If a transaction leads to new monies being advanced, the individual undertaking that role must be approved. (See rule SUP 10.10.11R to 10.10.13G.)
- Additionally it is not our intention to capture switching a non-regulated mortgage contract entered into before October 2004 into a regulated mortgage contract, again, so long as no new monies are being advanced.

### **Supervisors**

Supervisors of staff who provide advice, arrange and enter into home finance business, will require approval as a CF31. This is because supervisors are generally expected to undertake activities such as remedying non-compliant sales and supporting sales teams to cover peaks in volume so it is very likely that they would be involved in the upfront sales process. It is for this reason they will need to be approved as CF31s.

### **Trainees**

Any individual considered to be a trainee advisor/arranger involved in home finance business will be required to seek approval for the new CF31. They will be eligible for our transitional arrangements provided a) they are still being trained, b) they are being supervised appropriately, c) the firm has assessed them as competent as a supervised trainee to undertake the activities they are carrying on and d) the supervision and assessment was current at the date of submission of the application.

It is the responsibility of the firm to ensure that trainees are supervised and pass appropriate examinations, where relevant, before they are assessed as competent. While we do not require notification once the trainee has become fully competent, we will expect the firm to keep appropriate records demonstrating the transition from trainee to competent advisor.

### **Business lending**

The regime will apply to those staff undertaking advised and non-advised sales of business loans which are regulated mortgage contracts. Where the business lending is secured on the borrower's own home or homes, loans made to a sole trader, or (in England and Wales) a partnership, will constitute a regulated mortgage contract. See our Perimeter Guidance (PERG 4.4.2G) for more detail. The regime will not apply to other business loans.

**Q15:** Do you agree with our proposal to extend the compliance oversight function (CF10) to home finance activities?

- 6.20 Of the 39 responses received to question 15, the majority were wholly supportive of our proposal to extend the CF10 to home finance activities.
- 6.21 Lenders broadly supported the extension of the CF10 to cover home finance activities, mainly because they already had an approved person undertaking this role who is likely to be of a sufficiently senior level. Given the hierarchical and geographical nature of some of the larger firms, they did question the effectiveness of this role, as many of the CF31s would be far removed from the individual undertaking the CF10 function.
- 6.22 Mortgage intermediaries asked what evidence we have to show how the application of the CF10 would have reduced previous enforcement actions.

**Our response:** We accept that within large and sometimes complex firms, the CF10 may indeed be removed from the individual for whom they have responsibility. However, this situation may be no different from any large firm undertaking designated investment business.

The objective in extending the compliance oversight controlled function is to reinforce senior management responsibility for compliance – in particular compliance with the systems and controls underpinning the monitoring and assessment of their employees' fitness and propriety. This proposal also seeks to strengthen the application of Significant Influence Functions (SIFs) within these firms, consistent with the approach taken as part of the broader SIF review undertaken and consulted on most recently in CP10/3.<sup>9</sup>

We plan to proceed with this proposal.

**Q16:** Do you agree that our proposals to require criminal record disclosures are proportionate?

<sup>9</sup> [www.fsa.gov.uk/pubs/cp/cp10\\_03.pdf](http://www.fsa.gov.uk/pubs/cp/cp10_03.pdf)

- 6.23 We received 40 responses to this question, with a significant majority of respondents agreeing that criminal record disclosures are necessary as part of the broader vetting process and that our proposals for such disclosure are proportionate.
- 6.24 Some respondents wanted clarity about whether we would reverse an employer's judgement on an individual's criminal record.
- 6.25 One respondent questioned why this requirement is being introduced now and only for the individuals affected by the proposals in CP10/2.
- 6.26 Respondents also asked if it were possible to use an existing criminal record disclosure to meet this requirement.
- 6.27 Many respondents sought clarification of a firm's interpretation of 'spent convictions', concerned that this may be used as a reason to restrict an individual from operating in the mortgage industry. We were asked to confirm that our guidance on our website concerning adverse disclosure still stands.<sup>10</sup>
- 6.28 Lenders observed that Criminal Records Bureau (CRB) checks do not pick up instances of fraud where the fraud has not been reported to the police. Lenders actively rely on other databases<sup>11</sup> as part of the recruitment process, but are concerned that, by doing so, they are duplicating activities that have already been carried out and, therefore, incur an unnecessary cost. They suggested, therefore, that we employ industry fraud prevention services, which are used by the financial services industry to identify employees who have been dismissed for involvement in fraud.
- 6.29 Respondents sought assurance that both Disclosure Scotland and the CRB would be able to cope with the increase in demand created by this proposal, to ensure that firms' approval applications were not delayed. Concern was expressed that the three-month transitional period was likely to be insufficient.
- 6.30 A few respondents noted that, although this proposal was proportionate and would prevent unprincipled individuals from entering the industry, it would not prevent others from becoming corrupted.
- 6.31 One respondent questioned whether we were intending to extend this disclosure requirement to cover advisors applying for CF30 (designated investment business).

**Our response:** We recognise that, despite the widespread support, this proposal has raised issues. We currently operate a policy involving CRB checks, and this is set out on our website. We believe that, to achieve our objective of reducing mortgage fraud within the sector, we need to ensure effective and robust checks at the approval stage.

We expect firms to only send us an application on behalf of an individual after they have undertaken their own checks and satisfied themselves on their own assessment of the relevant criteria that the individual is fit and proper (see our guidance in SUP 10.12.9G (SUP 10.12)). Any adverse information must be disclosed to us.

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10 Our policy is set out in our factsheet *'Application for Approval: Our Approach to Adverse Disclosures'* [www.fsa.gov.uk/pubs/other/approval.pdf](http://www.fsa.gov.uk/pubs/other/approval.pdf)

11 Examples given were CIFAS and Hunter National

We will not automatically refuse applications for approval from individuals, who have criminal convictions, but these issues do raise serious concerns and they will need to be taken into account by firms and by us in making a decision about the approval of that individual.

Offences relating to dishonesty are of particular concern, even where the convictions are 'spent'. This is because we must assess the likelihood of reoffending. Where firms have taken the view that an individual with a previous criminal record is fit and proper, they will need to address our concerns. They should do this with regard to our fit and proper criteria (FIT), and in particular the individual's honesty and integrity, with reference to the adverse information. They should submit any supporting documentation. We will consider it in the light of all the relevant circumstances and make a judgement on a case-by-case basis.

The disclosure is only valid on the day of issue. A conviction or other matter could be recorded against the individual after the certificate has been issued and, therefore, a disclosure has no specified validity period. To ensure a robust individual approval process, we specify in our transitional rules that the certificate of disclosure should be no more than two months old.

We have been in contact with the CRB and Disclosure Scotland and they are confident they will be able to meet the increase in the volume of applications.<sup>12</sup> Disclosure Scotland will adjust their resourcing to meet the anticipated demand. Applications should be made to them direct via their automated online systems. Applications to the CRB will need to be made through an 'umbrella body'.<sup>13</sup> We will be contacting the umbrella bodies in advance of implementation so that they too are prepared.

Our risk-based approach to approvals is robust and fit for purpose. However, it would be unrealistic to believe we can prevent every unprincipled individual from entering the industry. Nevertheless, firms are reminded that there is a continuing obligation on all firms to inform us of any changes to an individual's fitness and propriety both pre-assessment of an application and post approval. Individuals themselves should also be aware that once approved, they are required to comply with APER and FIT throughout the life of their approval. And of course, once approved, there are a range of sanctions available to us to punish misbehaviour.

Applications seeking approval for CF31 or CF10 outside the transitional arrangements will be subject to our existing policy on criminal records checks, as stated on our website and as updated from time to time.<sup>14</sup>

**Q17: Do you agree with the principle of using our (modified) Long and Short Form A approach?**

- 6.32 Just over three-quarters of those that responded to this question were in favour of our approach and believed it was sensible for us to use existing forms and modify them as necessary for the sector seeking approval.

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12 This is subject to applications being submitted within the prescribed window; see the illustrative timetable in paragraph 7.52 below.

13 Sole traders and directors of single director firms will need to register with an umbrella body who will act as an intermediary between the CRB and the employing organisation. The umbrella body will process disclosure checks with the CRB on behalf of the firm and individual.

14 [www.fsa.gov.uk/pubs/other/approval.pdf](http://www.fsa.gov.uk/pubs/other/approval.pdf)

- 6.33 Respondents wanted to understand what additional questions we would be asking on the modified forms. They, mainly firms with large numbers of staff, wanted sight of the final forms, at least three months before the commencement date, so they could prepare for the forms to be completed by the staff affected by our policy.
- 6.34 Some respondents raised a concern that the use of our forms for existing staff would be disproportionate and unnecessarily bureaucratic. They argued that their staff had previously been subject to a rigorous internal recruitment process and suggested instead either a streamlined form or a 'grandfathering' approach to bring the individuals into the regime without any pre-assessment.

**Our response:** We have reviewed the feedback received to this proposal and do not believe there are grounds to amend our proposal.

The forms will be modified to include questions we would routinely ask about home finance activities. We are likely to include two additional questions: whether an individual has ever been removed from a lender's panel and a question about qualifications. We are currently undertaking a review of the standard Individual Approval Forms. The modified forms will be published on our website for information in Q4 2010.

While we welcome the fact that some lenders have rigorous recruitment processes in place, our Individual Approval Forms have been designed to assess an individual's fitness and propriety against factors such as honesty, integrity and financial soundness. We believe our checks are more probing and we have access to a wide range of sources to enable us to verify the information provided to us by firms and individuals.

To the extent that firms feel that their recruitment assessment and outcome of their recruitment vetting remain valid, they can use the relevant information in the approved persons application. Therefore, some firms may not incur the full cost we estimated in the CBA.

Q18: Do you agree with our proposed notification approach for individuals who are currently approved persons?

- 6.35 The majority of those who responded to question 18 were in favour of our proposed notification approach.
- 6.36 Some lenders commented that intermediaries would have an advantage over lenders as they believe a large proportion of intermediary advisors would already be approved to carry out other controlled functions relating to the sale of other regulated products. Lenders argue the cost and time savings offered by the notification process would give intermediaries an advantage in competing for business.

**Our response:** We have considered the feedback received and continue to believe the notification approach is appropriate for all individuals<sup>15</sup> who are already approved persons, engaged in advised or non-advised sales and whose fitness and propriety has not changed since their previous submission of a Long Form A. Where fitness and propriety have changed, the modified Long Form A must be used.

15 Existing approved persons who are not a CF10 but are currently acting as home finance business compliance officer will need to apply using the Individual Approval Form A.

Q19: Do you agree the way we intend to use these forms for the different groups is proportionate?

- 6.37 Just under three-quarters of the 39 firms who responded to question 19 agreed that our approach for the different groups, as set out in 11.4 of CP10/2, was proportionate, although the concern expressed in paragraph 6.36 above was again noted.

**Our response:** We will proceed with the approach outlined in CP10/2.

Q20: Do you agree with the timescales that we are proposing?

- 6.38 Nearly two-thirds of respondents considered the timescales to be ambitious but achievable. They emphasised that it was important for us to be confident that all participants (firms, the CRB, Disclosure Scotland, the FSA and others) were able to meet these timescales.
- 6.39 Because of a misunderstanding of the implementation process, respondents believed the speed at which applications would be processed was critical to allow individuals to carry on doing their job while waiting for approval from us. Some respondents expressed concern about our IT infrastructure used to submit and process the applications being able to cope with increased demand.
- 6.40 Again, because of this misunderstanding, respondents wanted clarity on what was expected of a firm while an individual was waiting to be approved. For example, what would the position be for firms where our decisions were still outstanding on their advisors' and arrangers' applications awaiting approval were still outstanding when the end date arrived?

**Our response:** We believe the timescales are appropriate given the need to deliver change in a timely way. Respondents have in fact misunderstood our intentions, thinking that the three-month window for applications to be submitted was actually the three-month window by which all applications must be determined.

The transitional arrangements have been designed to impose as little disruption on the industry as possible. Provided the firm has submitted a complete application to us within the relevant three-month time period (see illustrative timetable in paragraph 7.52), the transitional arrangements allow for that individual to continue undertaking their role until the application has been determined.

Firms will be using our automated online application system to submit applications and notifications. This will help us process the potentially large number of applications. We have a statutory obligation to determine a case within 90 days of receipt of the application, although this can be extended where we need to request additional information from the individual. We, therefore, urge firms and individuals to ensure all relevant supporting documentation, especially in relation to any adverse information disclosed, is attached. This will help us assess and determine applications efficiently.

We have been in contact with both criminal records agencies. They are confident that, subject to timely submission of applications, they will be able to accommodate the number of applications.

Sole trader and directors of single director firms will be required to register with an umbrella body to obtain CRB disclosures, which will add additional time to the overall process. We, therefore, strongly advise that these firms plan ahead to be able to submit a complete application in a timely manner (see illustrative timetable in paragraph 7.52).

Q21: Do you have any comments on our proposed changes to the Handbook (Part 2 – Appendix 1)?

- 6.41 Respondents submitted a number of substantive comments and suggested amendments to our proposed changes to the Handbook text, in particular on the nature and type of roles that will be captured by our policy. They requested further guidance on what activities were both covered and excluded by the CF31 function to support the rule.

**Our response:** We have considered the responses and have now modified this particular section of the Handbook text to offer a tighter definition of which roles are captured along with some additional guidance (SUP 10.10.10G-SUP 10.10.13G) to better reflect our intention.

We have also amended our rules to allow trainees who are deemed competent as supervised trainees to be eligible for the transitional arrangements (TP1.2 8N).

# 7 Approval process and implementation

- 7.1 This chapter sets out key information regarding implementation for firms seeking individual approval for CF31 or CF10 and our timescales for implementing the new rules. It applies to those who are currently performing a relevant activity and those who wish to start doing so once the new rules come into force.

## **Intended timescales for implementation**

- 7.2 As stated in paragraph 5.14 we are publishing near-final rules with this Policy Statement. We hope to publish final rules, including the commencement date, in September 2010. At present we are working towards a 31 March 2011 commencement date (see the illustrative timetable in paragraph 7.52). We believe this will provide firms with sufficient time to collect the relevant information, complete the necessary forms, obtain staff signatures and submit them to us in a timely manner.
- 7.3 As we said in Chapter 5, we intend to set up a dedicated page on our website that will provide firms and individuals with more detailed information regarding implementation and the process to be followed. We will keep this updated as necessary.

## **Key messages for firms and senior management**

- 7.4 FSMA has recently been amended to give us a new power to impose penalties on persons that perform controlled functions without approval.<sup>16</sup> Where an individual carries out a particular controlled function for which they have not been approved, we now have the power to impose a penalty on them. Previously we could not impose a penalty on such individuals, although we could (and still can) prohibit them where relevant. This new power to impose a penalty applies equally to those who are approved persons for a particular controlled function but perform a controlled function for which they are not approved and to those who are not approved for any controlled function.

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16 FSMA section 63A – This new section took effect on 8 June 2010.

- 7.5 We can take disciplinary action, where appropriate, against any individual undertaking one or more relevant functions, who should be approved and are not. Individuals carrying out a controlled function and not covered by our transitional arrangements must seek approval before operating.
- 7.6 Our requirements on authorised firms or appointed representatives (as employers) when recruiting staff are set out in our Handbook.<sup>17</sup> This underlines the responsibility on firms to carry out due diligence on prospective employees.
- 7.7 We do not impose any explicit requirements in this area – for example, about how many years’ worth of references the firm should obtain. However, we do expect senior management to assess, using a risk-based approach, which combination of checks (including credit and employment references and criminal records checks (see SUP 10.13.12R of our Handbook).
- 7.8 We would also expect firms to perform their own due diligence before submitting an application to us to approve an individual for any controlled function to ensure, in the firm’s judgement, they are fit and proper to undertake the relevant activity.
- 7.9 In the feedback to CP10/2 respondents expressed concern about the length of time it could take for us to determine an application. The time we take will depend on the nature of any issues raised by an application. We urge firms to ensure individuals exercise due care and diligence when completing the forms. The individual must disclose any information that they believe we should know about. This will assist in determining the application efficiently. An application which does not include supporting documentation, where required, will delay its progress. Anything that can be provided in anticipation of what we might need will speed up the process.

## **Eligibility for transitional arrangements**

### *Individuals who are not eligible for the transitional arrangements*

- 7.10 Individuals not eligible for the transitional arrangements on the relevant end date must cease undertaking any relevant activities until such time that they are approved (see illustrative timetable paragraph 7.52).

### *Individuals who are eligible for the transitional arrangements*

- 7.11 The following categories of individuals are eligible for the transitional arrangements:
- a. Individuals who, before the first start date, are not approved persons for any controlled function, but have been deemed competent by their firm to carry out a relevant activity.
  - b. Individuals who, before the first start date, are an approved person and the firm has assessed them as competent to carry out a relevant activity and that assessment was current at that date.

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17 SUP 10 Annex 1 Frequently Asked Questions.

- c. Individuals who, before the first start date, are being trained and are appropriately supervised, and the firm has assessed them as competent as a supervised trainee to carry out the relevant activities they are carrying out, taking into account that supervision and that assessment was current at that date.

### **Implementation approach: Individuals requiring approval for the first time**

- 7.12 This section covers the requirements for individuals who are currently carrying out a relevant activity, but are not currently approved for any controlled function under the regime.

#### *What is a complete application?*

- 7.13 A complete application means the submission of an up-to-date and true criminal records disclosure (see section below) and the relevant Individual Approved Persons Application Form A.
- 7.14 Firms and/or individuals should also submit any supporting documentation, where appropriate, in particular where adverse information has been disclosed.

#### *Which Individual Approval Form do I need to complete and how will I submit it?*

- 7.15 The Individual Approval Forms are currently being reviewed and will be available to view on our website during Q4 2010. The existing version is on our website.<sup>18</sup>
- 7.16 Paragraph 11.14 of CP10/2 lists which form is appropriate in each circumstance. This illustrative timetable is also in Appendix 1 of this part of the PS. It will also be available on our website in due course.
- 7.17 Firms (other than credit unions) will be required to submit applications to us electronically through our Online Notifications and Applications (ONA) system.

#### *Criminal records disclosures*

- 7.18 In paragraph 11.3 of CP10/2 we set out our requirements in relation to criminal records disclosures.
- 7.19 The criminal record disclosure must be true and obtained for this purpose. By this we mean that, at the date of receipt of the individual application, the accompanying CRB/Disclosure Scotland certificate should be dated no more than two months before the application is submitted to us. If the disclosure is no longer true, an updated one must be obtained.
- 7.20 Any pending prosecution must be disclosed in the application, providing any supporting documentation as appropriate.

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18 [http://fsahandbook.info/FSA/form\\_links.jsp](http://fsahandbook.info/FSA/form_links.jsp)

- 7.21 We emphasise that firms and individuals are under an obligation to advise us of any change that may affect our assessment of the individual's fitness and propriety prior to the application being determined and also once approved.

*Why should an individual disclose all adverse information?*

- 7.22 Senior management of the firms sponsoring the individual seeking approval as an approved person and the individuals themselves are obliged to disclose any adverse information relating to their fitness and propriety. We will have regard to a number of factors, including honesty, integrity, reputation, competence, capability and financial soundness as described in FIT.<sup>19</sup> This obligation is ongoing throughout the life of the individual's approval.
- 7.23 We take non-disclosure very seriously, especially where there is an attempt to mislead. If our vetting checks reveal any matters that have not been disclosed, then applications will be subject to further scrutiny and investigation. As a consequence the individual's suitability and the firm's assessment will be called into question.
- 7.24 A person who knowingly or recklessly provides information to us that is false or misleading may be committing a criminal offence and could face prosecution under section 398 of FSMA<sup>20</sup> regardless of the status of their application. Further details of our policy on adverse disclosures is available on our website.<sup>21</sup>

*Processing time for criminal records disclosures*

**Disclosure Scotland**

- 7.25 Firms and individuals<sup>22</sup> are encouraged to apply to Disclosure Scotland via their automated online system to reduce errors and increase efficiency.
- 7.26 Disclosure Scotland are aware of this exercise and the likely timescales and numbers. They will be putting in place sufficient resource to deal with the increase in disclosure requests. They aim to issue their disclosure certificate within 14 days from the time a correctly completed application is submitted.

**CRB**

- 7.27 The end-to-end processing time for sole traders and directors of single director firms will be longer as these individuals will need to register with an umbrella body<sup>23</sup> to obtain a CRB disclosure.
- 7.28 The CRB currently process around 98% of standard applications within two weeks. However, the time taken by umbrella bodies to process the application can mean the end-to-end process might take up to eight weeks. This will depend mainly on the

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19 <http://fsahandbook.info/FSA/html/handbook/FIT>

20 Financial Services and Markets Act 2000

21 [www.fsa.gov.uk/pubs/other/approval.pdf](http://www.fsa.gov.uk/pubs/other/approval.pdf)

22 Excluding sole traders and single directors.

23 The umbrella body acts as an intermediate between the CRB and the employing organisation and will process the disclosure checks on your behalf. The CRB website ([www.crb.homeoffice.gov.uk/](http://www.crb.homeoffice.gov.uk/)) offers a search engine which enables organisations to locate umbrella bodies accurately and efficiently.

efficiency of the umbrella body and on a correctly completed form being sent to the CRB. It is, therefore, essential that sole traders and directors of single director firms make arrangements with an umbrella body in good time.

*What happens if a complete application is submitted within the specified time period?*

- 7.29 Individuals who have taken advantage of the transitional arrangement, e.g. submitted a complete application within the relevant timescale, can continue to carry out the relevant activities until their application has been determined. In other words, the first end date given in the illustrative timetable in paragraph 7.52 only applies to the submission of a complete application, not to receiving the approval. Firms will receive an automatic acknowledgement once an application is submitted.

*What happens if an application is not submitted within the specified time period?*

- 7.30 If an application is not submitted within the relevant specified time period, firms will need to ensure that the individual immediately ceases undertaking relevant activities from the relevant end date (see illustrative timetable in paragraph 7.52). The firm must make the necessary arrangements to ensure the individual's pipeline business is passed to another person approved to undertake the relevant activities. Firms must ensure there is no consumer detriment as a result of this process.
- 7.31 If appropriate, the firm will need to submit an Individual Approval Form to us and the individual must not undertake any relevant activities until approval has been obtained.

*How will I know if you have received my application ?*

- 7.32 Firms will receive an automated acknowledgement of applications received by us.

*How will I know if my application has been approved?*

- 7.33 An approval notice will be sent to the firm when an individual put forward for a CF31 or CF10 has been approved. The FSA Register will also be updated showing the individual's details against the firm for which they are approved for the controlled function.

*What happens if approval is refused?*

- 7.34 If an individual's application for approval for a controlled function is refused by us, they must cease to undertake the regulated activities for which they are seeking approval. The firm must make the necessary arrangements to ensure the individual's pipeline business is passed immediately to a person approved to undertake the relevant activities. Firms must ensure there is no consumer detriment as a result of this process.

## **Implementation approach: Individuals who are already approved for one or more controlled function**

- 7.35 This section covers the implementation approach for individuals who are carrying on a relevant activity and already approved for one or more controlled functions (e.g. CF1, CF4 or CF30).

### *Notification approach (only applicable for individuals seeking CF31)*

- 7.36 If the requirements set out in the transitional rules are met, existing approval will cover the CF31 for that individual and that firm.
- 7.37 The Notification Form must only be used by firms where they are notifying us that an individual, currently an approved person, needs a CF31.
- 7.38 The authorised firm, sponsoring this individual, must tell us during the period specified in the illustrative timetable in paragraph 7.52, by way of a short automated notification form. The information requested on this form will be sufficient for us to identify the firm and the approved person. Firms will receive an automatic acknowledgment that the notification has been received and the FSA Register will also be updated.
- 7.39 The Notification Form will only be available to use by firms on the date of commencement. However, we plan to provide details of the content of the notification by the end of Q4 2010.

### *How will I know if you have received my notification?*

- 7.40 Firms will receive an automated acknowledgement of notifications received by us.

### *How will I know if approval has been granted?*

- 7.41 Names of individuals that have been approved for CF31 or CF10 will be shown on the FSA Register as they are determined. Names of individuals whose notifications have been processed for CF31 will also be shown on the FSA Register. We will publish regular updates on the number of individuals we have approved on our website.

### *What happens to individuals whose firms have failed to submit a notification within the relevant specified time period?*

- 7.42 If a notification on behalf of an individual is not submitted within the relevant specified time period, firms will need to ensure that the individual immediately ceases undertaking relevant activities. The firm must make the necessary arrangements to ensure the individual's pipeline business is passed to a person approved to undertake the relevant activities. Firms must ensure there is no consumer detriment as a result of this process.
- 7.43 The firm will need to submit an Individual Approval Form to us and the individual must not undertake any relevant activities until approval has been obtained.

## **When should applications and notifications be submitted?**

- 7.44 To ensure we meet our statutory duty to determine applications within three months of receiving them<sup>24</sup> and to impose as little disruption as possible on the industry, we will process applications from those currently carrying on one or more of the relevant activities in two groups: firstly those who do not hold any controlled function and secondly those already approved for one or more controlled functions.
- 7.45 Paragraph 11.20 in CP10/2 illustrates the specified time periods in which applications and notifications must be submitted. The illustrative timetable in paragraph 7.52 gives the dates based on a 31 March 2011 commencement date.

## **What happens where an individual who is already a CF10 is currently acting as a home finance business compliance officer?**

- 7.46 No action will be required by the firm or individual as the individual will already have the necessary approval.

## **Other transitional information**

### *Systems*

- 7.47 Our Online Notification and Applications system (ONA) is available from 7am to 8pm, Monday to Friday. All scheduled maintenance will take place during the weekends, so firms should not be affected. Information about system down time will be published on our website.
- 7.48 In the unlikely event that ONA is not available in the seven business days before the relevant end date, we will publish an announcement on our website allowing firms to submit their applications/notifications through conventional paper-based channels.

### *Pending application status*

- 7.49 We will give consideration to displaying the list<sup>25</sup> of pending applications on our website from the relevant end date.

### *How will trainee advisors (advised and non-advised sales staff) be treated?*

- 7.50 If an individual is still being trained, they are being supervised and the firm has assessed them as competent as a trainee to carry on one or more relevant activities, then, provided that supervision and assessment is current, they can still benefit from our transitional arrangements.

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24 This can be longer if we have to request further information.

25 We shall need to consider the legality of disclosing this information.

## Proposed timeline of events

- 7.51 Firms and individuals are strongly encouraged to make applications to the relevant criminal records agencies in the two-month window prior to the commencement date.<sup>26</sup>
- 7.52 The illustrative timetable below is based on a 31 March 2011 commencement date:<sup>27</sup>

Illustrative dates	FSA message/event	Desired action by firms	Essential action by firms
June 2010	Policy statement gives fuller details on preparing for implementation.	Firms take note	
Sept 2010	We hope to publish our final rules. We are aiming to launch the MMR approved persons webpage so firms and individuals can track the development and updates of implementation and approval process.	Firms take note	
Q4 2010	(Modified) Application forms for individual approval available for viewing on our website.		
Nov/Dec 2010		Sole trader and directors of single director firms to register with umbrella body.	
Jan/Feb 2011			Sole traders and directors of single director firms submit their CRB forms to their umbrella bodies. Remaining CF31/CF10 applicants apply to Disclosure Scotland.
31 Mar (start date) – 30 Jun 2011 (end date)	The date we aim to start accepting 'complete' applications from firms for individuals (not currently approved) seeking approval for CF10 and/or CF31.		All firms who have individuals seeking CF31/CF10 (and not currently an approved person) must submit completed applications, including criminal record check.

<sup>26</sup> The criminal records agencies will be making arrangements to deal with the increase in volume with view to meeting our timescales.

<sup>27</sup> As stated in Chapter 5, this commencement date is subject to implementation of the systems changes.

Illustrative dates	FSA message/event	Desired action by firms	Essential action by firms
1 Jul 2011			Any firm seeking approval for any individual, in this first group, who is not currently an approved person, and has not submitted a complete application, must cease their customer function activities or compliance oversight activities and their pipeline business passed to an approved person in the firm.
1 Jul (start date) – 30 Sept 2011 (end date)	<p>We accept notifications from firms for individuals who are approved for one or more controlled function and require the CF31.</p> <p>We accept from firms applications for individuals who are approved for another controlled function and require a CF10.</p>		All firms seeking approval for individuals as a CF31 (and who are already approved for one or more controlled functions) must submit their notifications.
1 Oct 2011			<p>Any firm seeking approval for any individual, currently an approved person, who hasn't submitted a notification, must cease their customer function activities with regard to home finance business.</p> <p>Firms with any individuals currently approved for a control function other than CF10, who has not submitted a complete application, must cease their compliance oversight activities.</p>

# 8 Cost benefit analysis

- 8.1 We have re-examined the original CBA as a result of the feedback received during the consultation. We have revised the cost section (namely the paragraphs 13.9 and 13.10 in the CP 10/2, see paragraph 8.2 for details) to take account of the new number of individuals that may be affected by our proposals. As the changes associated with the revised number of individuals affected do not result in a material change from the original CBA, the rest of the CBA in the CP remain valid. In this section of the paper we summarise the feedback on our CBA and give our detailed responses.
- 8.2 The industry questioned our estimation and suggested that c.14,500 lender staff alone would be affected.

**Our response:** In CP10/02, we estimated that c. 20,000 advisers and arrangers, currently not approved for any controlled function (CF), will be affected by our proposals.

A number of respondents questioned our estimation and suggested that c.14,500 lender staff alone would be affected. However, after our clarification of which individual functions would not be impacted,<sup>28</sup> those respondents revised the number of lender staff affected to c. 11,500.

We based our initial estimation presented in CP10/02 on the RMAR<sup>29</sup> data, which is supplied by lenders and intermediaries. However, this data does not fully reflect the number of individuals who are involved in arranging home finance transactions. In particular, this data does not capture those who undertake non-advised sales. After discussion with the trade associations, we have revised the number of non-CF advisers and arrangers that will be directly affected by our proposal to c. 20,000 to 30,000.<sup>30</sup> As a result of this revision, the paragraphs 13.9 and 13.10 in the CP10/2 are revised to the following:

The first element of the proposal to approve individuals who are currently not approved for any CF – approximately 20,000 to 30,000 (based on RMAR information supplied by firms, and the discussion with trade associations) – is estimated to incur a one-off

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28 [www.fsa.gov.uk/pubs/cp/cp10\\_2%20erratum.pdf](http://www.fsa.gov.uk/pubs/cp/cp10_2%20erratum.pdf)

29 Retail Mediation Activities Return.

30 From 20,000 in CP10/2

cost of £3.8m to £5.3m<sup>31</sup> for the FSA, and a one-off cost of £8.9m to £13.3m<sup>32</sup> for the industry. The second element of the proposal (i.e. the approved person's (AP's) existing approval will cover the new customer function CF31, if our transitional notification rules are followed), is estimated to give rise to a one-off cost of £150,000<sup>33</sup> for the FSA and £500,000<sup>34</sup> for the industry. So the total one-off cost associated with extending the AP regime to cover the relevant activities will be £4m to £5.5m for the FSA, and £9.4m to £13.8m for the industry.

In addition, assuming 20%<sup>35</sup> annual turnover, the requirement that all future applicants will need to undergo the usual approval process will incur an on-going cost of about £640,000 to £800,000<sup>36</sup> per year for the FSA and £1.6m to £2m<sup>37</sup> per year for the industry. However, the ongoing cost may be lower than estimated, as firms may be able to find some synergies in their recruiting process and the approved persons application processes.

### 8.3 Some respondents said we had not estimated the cost of policing, supervision and enforcement of new approved persons

**Our response:** In CP10/3 and revised in this PS, we estimated the one-off costs of bringing the home finance business into the regime, and we also estimated the ongoing costs associated with the approving future applicants. These costs take into account our automated submission system and our samplings, based on what the system flags up. We acknowledged that the effectiveness of the regime will depend on our effort on supervising and taking enforcement action against relevant individuals.

The main aim of the proposal to extend the approved persons regime to cover relevant activities in the home finance business is to keep out those individuals who are most likely to misbehave and to allow us to take targeted disciplinary action against non-compliant individuals directly and more effectively.

It may appear that supervising an additional c. 20,000 to 30,000 approved persons will cause a significant drain on our resource. However, we will continue with our current regulatory approach of supervising firms on a risk-based approach, rather than individuals and, as the number of firms does not increase as a direct result of our proposals, we do not envisage that a significant increase in supervision resource will be required.

In addition, to the extent that our fitness and propriety criteria are sufficiently effective at identifying, in advance, those who are likely to misbehave, there are benefits associated with a vetting and approval system which keeps unsuitable individuals out. Keeping out unsuitable individuals should lead to a corresponding reduction in associated demand on

- 31 £600K IS costs, £320K other fixed cost, and £2.9m variable costs for 20,000 individuals; £4.4m variable costs for 30,000 individuals.
- 32 This includes the cost of providing the criminal record disclosure: the cost of the time it will take to complete the criminal records disclosure forms including the cost of the check itself. It also includes the cost of firms' time to complete the individual approvals Long Form A.
- 33 IS cost was included in the £600K estimate above.  $£7.5 \times 20,000 = £150K$ .
- 34 £25 per notification,  $£25 \times 20,000 = £500K$ .
- 35 This estimate is based on our MI for existing CF30 (designated investment advisers/arrangers): there are about 130k CF30, and we received 29k applications in 2009.
- 36 At the end of the transitional period, all new applicants – whether from currently APs or not – will undergo the usual AP procedure. It is estimated to cost the FSA £25 per application, and then on top of this, it is estimated an additional  $£44 \times 21\text{hrs} = £924$  for 5% cases, additional £44 for 20% of cases:  
 $20\% \times 40k \times (100\% \times £25 + 20\% \times £44 + 5\% \times 924) = £640k$  or  
 $20\% \times 50k \times (100\% \times £25 + 20\% \times £44 + 5\% \times 924) = £800k$
- 37  $20\% \times 40k \times £200$  (based on Real Assurance study) = £1.6m ;  $20\% \times 50k \times £200 = £2.0m$ .

supervision resource. Moreover, under the new regime, enforcement will be able to take targeted disciplinary action against non-compliant individuals directly and more effectively (compared with the current approach of taking action against authorised firms and approved persons in those firms, while the wrong doers who are not approved individuals can freely move around in the industry without any penalties). So our proposals should lead to a more efficient and effective use of existing supervision and enforcement resource.

- 8.4 Lender estimated the one-off costs arising from these proposals to be £600 per person cost involved (covering admin, CRB and project costs).

**Our response:** In the CP, we estimated the one off cost for individuals who are not already FSA approved persons to be £450. This cost includes the cost of the criminal record disclosure, the cost of completing the criminal records disclosure form and the cost of the time it would take to complete the Individual Approval Form (A).

Lenders, however, estimated one-off costs of £600 per person to cover the administration and criminal record checks. Discussions with the trade associations revealed that the £600 estimation is the cost firms incur in vetting new employees, and includes fees paid by some firms to the third party who process the vetting on their behalf.

So our estimate of £450 per person for those individuals who are not already FSA-approved remains valid. Our estimation of £450 is based on our experience in approved persons regime.<sup>38</sup> It is an average. We acknowledge costs to individual firms may vary. In addition, the process of firms' vetting new employees is not identical to the approved persons approval process.

Firms may find that in some cases they do not need to spend as much as £450 additional per person, if they find they can re-use some information which the firm may have obtained when vetting a new employee (e.g. the relevant criminal record disclosure, which is no more than two months old at the time a complete application is submitted) and/or if they can align their recruiting and approved persons application process for relevant staff.

- 8.5 We have understated the cost of criminal records checks. Lenders use external third parties to carry out these searches, some of which also provide reference checks as part of the 'package' etc.

**Our response** Some lenders argued that we under-estimated the cost of a criminal record check. Further discussion with trade associations revealed that some lenders use external third parties to provide reference checks, which includes but is not limited to criminal record checks. Therefore the higher costs lenders reported include costs of other services not required by the regulation. Therefore, we have not revised this estimate.

- 8.6 Respondents mentioned that regulatory obligations mean that lenders will need to increase the salary for these individuals.

**Our response:** Firms are already required to ensure their advisors and arrangers, including those who undertake non-advised sales, are compliant with our training and competence requirements. These requirements mean that advisors and arrangers have to meet certain obligations set out by the firms currently. Our proposals do not impose any additional

38 Real Assurance Survey of compliance costs

obligations or qualification requirements on these individuals. So it is difficult to argue for a salary increase as a direct result of our proposal.

We are advised that lenders will generally already have an approved person undertaking the compliance oversight function for their home finance business (much like a CF10). That person's current compensation would reflect the job holder's responsibility. The approved persons regime does not impose any additional responsibilities or additional qualifications on that person, so it is difficult to argue that our proposal will lead to a salary increase directly.

- 8.7 A trade association quoted the annual ongoing cost for industry to be £15m, which includes administration, criminal record checks, project costs and £2,000 salary increase. Our estimated ongoing cost was £1.6m (see footnote 45 of CBA in CP10/2)).

**Our response:** The industry's estimation of ongoing costs includes a £2,000 salary increase, which we do not agree with (as stated above). The industry's estimation of ongoing costs also includes £200 per person ongoing administration cost. As there is little ongoing administration required by our proposal, we do not agree that the proposal will lead directly to an incremental administration cost of £200 per approved person. Our experience of the regime<sup>39</sup> in other sectors also does not support this additional £200 per person ongoing administration cost.

In addition, after the initial implementation stage, firms may find some synergies between their own employee vetting processes at the recruitment stage and our approved persons application process (e.g. criminal record check).

- 8.8 Lenders point out that we underestimated our one-off implementation costs because:
- (1) Some lenders outsource their checks to third parties to undertake its recruitment checks including criminal records and reference checks.
  - (2) Our estimate did not reflect time to: inform staff about the proposals and ramification of being approved; manage issues that staff may have about this; manage the exercise around obtaining hundreds of requests from the criminal records agency and responding to queries; undertake any additional enhanced checks where appropriate; collate the necessary data to check and validate before submitting to us; respond to any queries from us; and inform staff of whether their application was successful.

**Our response:** Our policy only requires an individual application form to be submitted along with the relevant criminal record disclosure (see our response to question 16 about what constitutes an acceptable criminal records disclosure).

Our CBA is based on any incremental cost to the industry. We already expect firms to have appropriate systems and controls in place to monitor and manage employees. Our estimate of £450 per individual does represent the average cost per application based on our experience of the regime in other sector. We appreciate that the actual cost per application may vary from firm to firm. If a firm wishes to employ a third party to undertake its checks then that is a commercial decision made by the firm.

39 Based on Real Assurance Survey.

- 8.9 The industry commented that the proposals will also result in changes to business processes, systems, training and competence of more than minimal significance.

**Our response:** Our CBA estimates the cost arising from our proposals that are over and above what the firm already has in place at the moment. We estimated the one-off costs to the firms associated with extending the regime to relevant home finance activities, and the ongoing costs to the firms associated with future applications. Should firms find that they could change their business processes to realise the potential synergies between the approved persons process and their own process (e.g. recruitment vetting), then they will find that the additional costs of our requirements can be lowered.

Firms are already required to ensure their advisors, including those who undertake non-advised sales, are compliant with our training and competence requirements. We do not believe there are material additional training and competence requirements as a direct result of these proposals.

- 8.10 Some respondents said the CBA did not make it clear if supervisors of CF31s are caught. They are generally expected to carry the same qualifications as their staff to undertake activities such as remedying non-compliant sale and supporting sales teams to cover spikes in volume. There may also be other roles between the CF31 and the CF10. If caught, this will have an adverse impact on lenders costs.

**Our response:** As discussed in detail in our response to questions 12, 13 and 14 in Chapter 6, supervisors of CF31s will also be impacted by our proposals and our CBA estimates include this impact.

- 8.11 Lenders said often undertake more rigorous checks of their staff and are concerned about duplicating checks that have already been carried out representing unnecessary costs.

**Our response:** We have an obligation under FSMA to assess an individual against our fit and proper criteria. Our assessment to determine an individual's suitability to perform a CF31 or CF10 considers honesty, integrity, reputation, competence, capability and financial soundness. Section 5 (Fitness and Propriety) of the Individual Approval Form A is designed to help us determine an individual's suitability against these measures. We have no evidence that the recruitment checks and vetting undertaken by the lenders extend as widely and it is also not clear that checks carried out by firms are consistent across the industry.

To the extent that firms feel that their assessment and outcome of their recruitment vetting is still valid, they can use this information in the approved persons application and, therefore, may not incur the full cost we estimated in the CBA.

- 8.12 Some respondents questioned whether either CF10 or CF31 on its own have stopped the market failure? Would CF10 or CF31 work on its own?

**Our response:** The introduction of CF31 to home finance business is to identify, in advance, those who are likely to misbehave, with the aim of keeping those individuals who are most likely to misbehave out through a vetting and approval system. The introduction of CF31 to home finance business also allows us to take a targeted disciplinary action against non-compliant individuals directly and more effectively.

The extension of the compliance oversight function (CF10) to this sector is to reinforce senior management responsibility for compliance, and in particular compliance with those systems and controls underpinning the monitoring and assessment of their employees' fitness and propriety.



# Individual Approval Form requirements

The table below illustrates which form is required under which circumstance. For further clarification please refer to paras 11.16 – 11.20 in CP10/2.

<b>Applicant</b>	<b>Application requirement</b>
Currently carrying out one or more relevant activity but not currently an approved person	(Modified) Long Form A
Currently carrying out one or more relevant activity and already an approved person applying for CF31	Notification
Currently carrying out one or more relevant activity and already an approved person, but whose fitness or propriety has changed since previous submission of Long Form A	(Modified) Long Form A
Currently an approved person but new to the relevant activities	(Modified) Short Form A
Individuals new to the relevant activities and not currently an approved person	(Modified) Long Form A
CF10 applicants who are currently acting as home finance business compliance officer and currently approved for CF10 for investment business	None
CF10 applicants who are currently acting as home finance business compliance officers and approved for a controlled function that does not include CF10	(Modified) Short Form A + CV and supplementary information on how the proposed appointment was agreed by the sponsoring firm
CF10 applicants who are currently acting as home finance business compliance officer but not an approved person	(Modified) Long Form A + CV and supplementary information on how the proposed appointment was agreed by the sponsoring firm



# Near-final rules

**APPROVED PERSONS (HOME FINANCE ACTIVITIES) INSTRUMENT 2010****Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 59 (Approval for particular arrangements);
  - (2) section 60 (Applications for approval);
  - (3) section 64 (Conduct: statements and codes);
  - (4) section 138 (General rule-making power);
  - (5) section 156 (General supplementary powers); and
  - (6) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on *[date]*.

**Amendments to the Handbook**

- D. The modules of the FSA’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
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Statements of Principle and Code of Practice for Approved Persons (APER)	Annex C
Fees manual (FEES)	Annex D
Supervision manual (SUP)	Annex E
Credit Unions sourcebook (CRED)	Annex F

**Citation**

- E. This instrument may be cited as the Approved Persons (Home Finance Activities) Instrument 2010.

By order of the Board  
*[date]*

## Annex A

### Amendments to the Glossary of definitions

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

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

<i>customer-facing function</i>	either of the <i>controlled functions</i> 30 or 31 in the <i>table of controlled functions</i> .
<i>customer function (home finance business)</i>	the <i>controlled function</i> 31 in the <i>table of controlled functions</i> , described more fully in SUP 10.10.8R.

Amend the following as shown.

<i>customer function (designated investment business)</i>	the <i>controlled function</i> 30 in <u>the</u> <i>table of controlled functions</i> , described more fully in SUP 10.10.7AR.
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## Annex B

### Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

#### 3.2 Areas covered by systems and controls

...

The compliance function

...

- 3.2.8 R (1) A *firm* which carries on *designated investment business* with or for *retail clients* or *professional clients*, or *home finance activities* with or for *customers*, must allocate to a *director* or *senior manager* the function of:
- (a) having responsibility for oversight of the *firm's* compliance; and
  - (b) reporting to the *governing body* in respect of that responsibility.
- (2) In (1) “compliance” means compliance with the *rules* in:
- (a) *COBS* (the *Conduct of Business sourcebook*);
  - (b) *COLL* (the *Collective Investment Schemes sourcebook*); ~~and~~
  - (c) *CASS* (the *Client Assets sourcebook*); ~~and~~
  - (d) *MCOB* (the *Mortgages and Home Finance: Conduct of Business sourcebook*).

...

#### 6.1 Compliance

...

- 6.1.4A R (1) A *firm* which is not a *common platform firm* and which carries on *designated business* with or for ~~*retail clients*~~ *retail clients* or ~~*professional clients*~~ *professional clients*, or *home finance activities* with or for a *customer*, must allocate to a *director* or *senior manager* the function of:
- (a) having responsibility for oversight of the *firm's* compliance;

and

- (b) reporting to the *governing body* in respect of that responsibility.

(2) In ~~SYSC 6.1.4AR~~(1) “compliance” means compliance with the ~~rules~~ rules in:

- (a) *COBS* (the Conduct of Business sourcebook);
- (b) *COLL* (the Collective Investment Schemes sourcebook) ~~and~~ ~~*CIS* (Collective Investment Schemes sourcebook)~~ (where appropriate;
- (c) *CASS* (the Client Assets sourcebook); ~~and~~
- (d) *ICOBS* (the Insurance: Conduct of Business sourcebook); and
- (e) *MCOB* (the Mortgages and Home Finance: Conduct of Business sourcebook).

...

## Annex C

### Amendments to the Statements of Principle and Code of Practice for Approved Persons (APER)

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

#### 4.5 Statement of Principle 5

...

Temporary vacancies

- 4.5.15 G In organising the business, the *approved person* performing a *significant influence function* should pay attention to any temporary vacancies which exist (see *APER* 4.5.9E(3)). He should take reasonable steps to ensure that suitable cover for responsibilities is arranged. This could include taking on temporary staff or external consultants. The *approved person* performing a *significant influence function* should assess the risk that is posed to compliance with the requirements and standards of the *regulatory system* as a result of the vacancy, and the higher the risk the greater the steps he should take to fill the vacancy. It may be appropriate to limit or suspend the activity if appropriate cover for responsibilities cannot be arranged. To the extent that those vacancies are in respect of one of the *customer-facing functions*, they may only be filled by *persons* approved for that function.

...

## Annex D

## Amendments to the Fees manual (FEES)

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

## 4 Annex 1R Activity groups, tariff bases and valuation dates applicable

...

## Part 2

This table indicates the tariff base for each fee-block. The tariff base is the means by which we measure the ‘amount of business’ conducted by *a firm*. Note that where the tariff base is the number of *approved persons* it may be that a particular *firm* has *permission* for relevant activities as described in Part 1 but the type of activity that the *firm* undertakes is not one requiring a *person* to be approved to undertake ~~a relevant~~ the customer function (*designated investment business*) (CF30) (for example *firms* only giving *basic advice on stakeholder products*). In these circumstances, the *firm* will be required to pay a minimum fee only (see FEES 4 Annex 2R Part 1).

Activity group	Tariff base
...	
A.12	<p><b>APPROVED PERSONS</b></p> <p>The number of <i>persons</i> approved to perform the <i>customer function (<u>designated investment business</u>) (CF30)</i>, but excluding those <i>persons</i> who work solely in the <i>firm’s MTF</i> operation or solely acting in the capacity of an <i>investment manager</i> or solely advising <i>clients</i> in connection with <i>corporate finance business</i> or performing functions related to these.</p>
A.13	<p><b>APPROVED PERSONS</b></p> <p>The number of <i>persons</i> approved to perform the <i>customer function (<u>designated investment business</u>) (CF30)</i>, but excluding those <i>persons</i> who work solely in the <i>firm’s MTF</i> operation or solely acting in the capacity of an <i>investment manager</i> or solely advising <i>clients</i> in connection with <i>corporate finance business</i> or performing functions related to these.</p>
A.14	<p><b>APPROVED PERSONS</b></p>

	The number of <i>persons</i> approved to perform the <i>customer function (designated investment business)</i> (CF30), who advise <i>clients</i> in connection with <i>corporate finance business</i> or perform related functions.
...	

...

## 5.8 Joining the Financial Ombudsman Service

...

### Application of FEES 5.8.2R

- 5.8.3 G The table below sets out the period within which a *firm's* tariff base is calculated ("the data period") for second year levies calculated under *FEES* 5.8.2R. The example is based on a *firm* that acquires *permission* on 1 November 2009 and has a financial year ending 31 March. Where valuation dates fall before the *firm* receives *permission* it should use projected valuations in calculating its levies.

References in this table to dates or months are references to the latest one occurring before the start of the *FSA's* financial year unless otherwise stated.

Type of permission acquired on 1 November	Tariff base	Valuation date but for FEES 5.8.2R	Data period under FEES 5.8.2R
...			
Advisory <i>arrangers</i> , dealers or brokers holding and controlling <i>client money</i> and/or assets	Number of relevant <i>persons</i> approved to perform the <i>customer function (designated investment business)</i> (CF30), with certain exclusions.	Relevant <i>approved persons</i> as at 31 December	Relevant <i>approved persons</i> as at 31 December

...

## 5 Annex 1R Annual Fees Payable in Relation to 2009/10

...

## Part 2: Fee tariffs for general levy

Industry block	Tariff base	General levy payable by firm
...		
8 – Advisory arrangers, dealers or brokers holding and controlling <i>client money</i> and/or assets.	Number of relevant <i>persons</i> approved to perform the <i>customer function (designated investment business)</i> (CF30), but excluding those <i>persons</i> solely acting in the capacity of an <i>investment manager</i> or solely advising <i>clients</i> in connection with <i>corporate finance business</i> or performing functions relating to these.	£35 per relevant <i>approved person</i> subject to a minimum levy of £35
9 – Advisory arrangers, dealers or brokers not holding and controlling <i>client money</i> and/or assets	Number of relevant <i>persons</i> approved to perform the <i>customer function (designated investment business)</i> (CF30), but excluding those <i>persons</i> solely acting in the capacity of an <i>investment manager</i> or solely advising <i>clients</i> in connection with <i>corporate finance business</i> or performing functions relating to these.	£35 per relevant <i>approved person</i> subject to minimum levy of £35
...		

## Annex E

### Amendments to the Supervision manual (SUP)

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

#### 10.1 Application

...

Overseas firms: UK establishments

- 10.1.7 R Only the following *controlled function* apply to an *overseas firm* which maintains an establishment in the *United Kingdom* from which *regulated activities* are carried on:

...

- (7) the *customer-facing ~~function~~ functions*.

...

Incoming EEA firms: passported activities from a branch

- 10.1.13 R Only the following *controlled functions* apply to an *incoming EEA firm* with respect to its *passported activities* carried on from a *branch* in the *United Kingdom*:

...

- (6) the *customer-facing ~~function~~ functions* other than where this relates to the function in *SUP 10.10.7AR(4)*.

...

Incoming EEA firms etc with top-up permission activities from a UK branch

- 10.1.14 R In relation to the activities of a *firm* for which it has a *top-up permission*, only the following *controlled functions* apply:

...

- (4) the *customer-facing ~~function~~ functions*.

...

Appointed representatives

- 10.1.16 R The descriptions of the following *controlled functions* apply to an *appointed*

*representative of a firm, except an introducer appointed representative, as they apply to a firm:*

...

- (2) the ~~customer-facing function~~ *functions* other than in relation to acting in the capacity of an *investment manager* (see SUP 10.10.7AR(6)).

...

## 10.4 Specification of functions

...

### Table of Controlled Functions

#### 10.4.5 R

Type	CF	Description of controlled function
...		
<i>Customer-facing functions</i>	21	[deleted]
	22	[deleted]
	23	[deleted]
	24	[deleted]
	25	[deleted]
	26	[deleted]
	27	[deleted]
	30	<i>Customer function (designated investment business)</i>
	<u>31</u>	<i>Customer function (home finance business)</i>

...

## 10.6 Governing functions

...

- 10.6.3 G The effect of SUP 10.6.2R is that a *person* who is *approved* to perform a *governing function* (other than the *non-executive director function* and the function described in SUP 10.6.4R(2)) will not have to be specifically approved to perform the *systems and controls function* or the *significant management function*. A *person* who is ~~approved~~ approved to perform a *governing function* will have to be additionally approved before he can perform any of the *required functions* or the *customer-facing function functions*.

...

## 10.7 Required functions

...

Compliance oversight function (CF10)

- 10.7.8 R The *compliance oversight function* is the function of acting in the capacity of a *director* or *senior manager* who is allocated the function set out in SYSC 3.2.8R, ~~or~~ SYSC 6.1.4R(2) or (insofar as it relates to *home finance activities* or matters to which MCOB applies) SYSC 6.1.4AR.

...

## 10.10 Customer-facing functions

- 10.10.1 R SUP 10.10 (~~Customer function~~) applies with respect to activities carried on from an establishment maintained by the *firm* (or by its *appointed representative*) in the *United Kingdom*.
- 10.10.2 G Without SUP 10.10.1R the description of the *customer-facing function functions* would extend to ~~this function~~ these functions wherever ~~it was~~ they were performed. The effect of SUP 10.10.1R is that the description is limited, in relation to *regulated activities* with an overseas element, in a manner which is broadly consistent with the scope of conduct of business regulation.
- 10.10.3 G The *customer-facing functions* ~~has~~ have to do with giving advice on, *dealing* and arranging deals in and *managing investments* or home finance activities; ~~it has~~ they have no application to banking business such as deposit taking and lending, nor to *general insurance business*.

The customer conditions (the second and third conditions)

- 10.10.4 R The *customer-facing function functions* ~~is one~~ are ones which will involve the *person* performing it in dealing with *clients* or customers, or dealing with property of *clients* or customers, of a *firm* in a manner substantially connected with the carrying on of a *regulated activity* of the *firm*.

...

Customer function (designated investment business) (CF30)

10.10.7A R The *customer function (designated investment business)* is the function of:

...

10.10.7B R The *customer function (designated investment business)* does not extend to an individual who is performing the functions in SUP 10.10.7AR(1) to (2) or SUP 10.10.7AR(5) to (6) and who is based overseas and who, in a 12 month period, spends no more than 30 days in the *United Kingdom* to the extent that he is appropriately supervised by a *person* approved for this function.

...

10.10.7D G The *customer function (designated investment business)* in SUP 10.10.7AR(5) does not extend to the individual who, on the instructions of the *customer*, simply inputs the *customer's* instructions into an automatic execution system where no discretion is or may be exercised by the individual performing the activity. Nor does it extend to merely introducing a *customer* to a ~~firm~~ *firm* or distributing advertisements.

...

Customer function (home finance business) (CF31)

10.10.8 G ~~deleted~~ The *customer function (home finance business)* means the function of dealing with *clients*, or dealing with the property of *clients*, of a *firm* in a manner substantially connected with the carrying on of any of the following regulated activities of the *firm*:

(1) *advising on a home finance transaction; or*

(2) *arranging (bringing about) regulated mortgage contracts; or*

(3) *arranging (bringing about) a home purchase plan; or*

(4) *arranging (bringing about) a home reversion plan; or*

(5) *arranging (bringing about) regulated sale and rent back agreements;*  
or

(6) *home finance providing activities.*

10.10.9 GR ~~deleted~~ SUP 10.10.8R(6) does not cover the functions of a *person* that would otherwise fall under SUP 10.10.8R(6) if the functions relate only to the period following the application by the *customer* for a *home finance transaction*.

10.10.10 G The purpose of SUP 10.10.9R is to exclude certain activities from the *customer function (home finance business)*. There are various features.

- (1) The exclusion only relates to SUP 10.10.8R(6). That means that a person who carries on arranging or advisory activities will come within the customer function (home finance business), whether his functions relate to the period before or after the application by the client for a home finance transaction.
- (2) The customer function (home finance business) does not apply to a person if his client-facing functions only come within SUP 10.10.8R(6) and only relate to the period following the application by the client for the home finance transaction. SUP 10.10.4R explains what client-facing function means in this context.
- (3) If a person's functions coming within SUP 10.10.8R(6) cover both the period before and after the application, all those functions come within the customer function (home finance business). That means for example that APER will apply to what the person does both before and after the application by the client.

10.10.11 R ~~{deleted}~~ SUP 10.10.8R(6) does not include home finance providing activities if the transaction does not involve the advance of monies or further monies to the client.

10.10.12 G ~~{deleted}~~ For example, the FSA would expect SUP 10.10.11R to remove from the customer function (home finance business) transactions such as the addition or removal of a party to a regulated mortgage contract, rate switches, the alteration a regulated mortgage contract or an alteration to the payment method. In each case this is as long as no new monies are advanced.

10.10.13 R ~~{deleted}~~ SUP 10.10.11R would also remove from the customer function (home finance business) the switching of a mortgage contract entered into prior to October 2004 into a regulated mortgage contract as long as no new monies are advanced.

...

10.10.14 R ~~{deleted}~~ An individual may carry on home finance activities prior to being assessed as competent in accordance with the rules in the Senior Management Arrangements, Systems and Controls sourcebook (SYSC) and, where relevant, the Training and Competence sourcebook (TC). The firm shall record when that person subsequently becomes competent.

...

**10 Annex 1G Frequently asked questions**

	Question	Answer
	Requirements of the regime	

...		
2	What are the procedures for 'emergency situations'?	Individuals may perform the <i>significant influence function</i> for up to 12 weeks in any consecutive 12 <i>month</i> period without requiring approval. When it becomes clear that a <i>person</i> will be performing the function on a permanent basis, then an application for approval should be made. However, there is no provision for individuals to perform the <i>customer-facing function functions</i> on a continuing basis without approval. See <i>SUP</i> 10.5.5R.
...		
21	How long will the <i>FSA</i> take to process an application for <i>approved person</i> status?	Generally the <i>FSA</i> will handle this within seven <i>business days</i> for <i>significant influence functions</i> and four <i>business days</i> for <i>customer-facing functions</i> . However, if information is missing, or the information provided gives the <i>FSA</i> cause for concern, processing time will almost always be longer. In each case, the <i>FSA</i> will notify the <i>firm</i> of any extension to the processing time.
...		

...

**How does do the customer-facing function functions relate to the training and competence requirements?**

Activity	Products / sectors in TC Appendix 1	Controlled Function	SUP
<i>Designated investment business carried on for a retail client</i>			
Advising only;	2-9;	<i>customer-facing function (CF 30) functions</i>	10.10.4R
Undertaking an activity;	10-11;	<i>customer-facing functions</i>	
Advising and dealing	12-13;	<i>customer-facing functions</i>	
Managing investments	14	<i>customer-facing functions</i>	
<i>Regulated mortgage activity and reversion activity carried on for a customer</i>			

<u>Advising</u>	<u>20 – 21</u>	<u>customer-facing functions</u>	<u>10.10.4R</u>
<u>Regulated sale and rent back activity carried on for a customer</u>			
<u>Advising</u>	<u>25</u>	<u>customer-facing functions</u>	<u>10.10.4R</u>

...

## 12.2 Introduction

...

Introducers and representatives: what do these terms mean and what is the relationship with an appointed representative?

...

12.2.14 G (1) ...

- (2) If a *firm* appoints an *appointed representative* who is an individual in (1), that *appointed representative* will also be a *representative*. The individual may need to be approved to perform the *customer-facing function functions*, (see *SUP* 12.6.8G and *SUP* 12.6.9G). In these circumstances, in addition to complying with the requirements of *SUP* 12 and other regulatory requirements, the *firm* should ensure that the *rules* for *representatives* in *COBS* 6 (Information about the firm, its services and remuneration) are complied with.

...

## 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 (1) Some of the *controlled functions*, as set out in *SUP* 10.4.1R, apply to an *appointed representative* of a *firm*, other than an *introducer appointed representative*, just as they apply to a *firm* (see *SUP* 10.1.16R). These are the *governing functions* and the *customer-facing function functions*. As explained in *SUP* 10.1.16AR and *SUP* 10.3.2G respectively:

- (a) ...
- (b) although the *customer-facing function functions* ~~applies~~ apply to an ~~appointed representative~~ *appointed representative*, the descriptions of the functions themselves do not extend to ~~home finance mediation activity or insurance mediation~~

*activity; and*

...

Insert the following new rows in the SUP Transitional Provisions. The text is not underlined.

**TP 1 Transitional provisions**

...

TP 1.2

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
8K	SUP 10.7.8R	R	(1) This <i>rule</i> deals with the extension of the <i>compliance oversight function</i> to cover <i>home finance activities</i> by the Approved Persons (Home Finance Activities) Instrument 2010.	Not applicable	Not applicable
			(2) This <i>rule</i> applies to a <i>person</i> who meets the following conditions immediately before the first application period start date:  (a) he would have been performing the part of the <i>compliance oversight function</i> described in (1) for a <i>firm</i> because of the extension described in (1) if that extension had been in force; and  (b) he was approved to perform the <i>compliance oversight function</i> for that <i>firm</i> .		
			(3) The approval for carrying out the <i>compliance oversight function</i> covers the extension referred to in (1) as respects that <i>person</i> and that <i>firm</i> .		

			(4) <i>SUP TP 8PR</i> contains various supplemental provisions applicable to this <i>rule</i> .		
8L	<i>SUP 10.7.8R</i>	R	(1) This <i>rule</i> deals with the extension of the <i>compliance oversight function</i> to cover <i>home finance activities</i> by the Approved Persons (Home Finance Activities) Instrument 2010.	First application period start date to the first application period end date	First application period end date
			(2) This <i>rule</i> applies to a <i>person</i> who meets the following conditions immediately before the first application period start date:  (a) he would otherwise have been performing the part of the <i>compliance oversight function</i> described in (1) for a <i>firm</i> because of the extension described in (1) if that extension had been in force;  (b) he was not approved to perform any <i>controlled function</i> for that <i>firm</i> ; and  (c) the <i>firm</i> has assessed him as competent to carry on the activities in (a) and that assessment was current at that date.		
			(3) The functions relating to the <i>home finance activities</i> brought into the <i>compliance oversight function</i> by the extension described in (1), as respects that <i>person</i> and that <i>firm</i> , are not treated as forming part of the <i>compliance oversight function</i> .		
			(4) If this transitional <i>rule</i> has not already expired under column (5), this <i>rule</i> comes to an end as respects that <i>person</i> and that <i>firm</i> if and when an application is made for the person to perform the <i>compliance oversight function</i> for that <i>firm</i> and that application is granted.		

			(5) If the <i>FSA</i> has received a complete application for that <i>person</i> to perform the <i>compliance oversight function</i> before the first application period end date and that application has not been finally decided by the time that the transitional period in column (5) would otherwise have come to an end, that transitional period is extended until the application has been finally decided.		
			(6) <i>SUP TP 8PR</i> and <i>SUP TP 8QD</i> contain various supplemental provisions applicable to this <i>rule</i> .		
8M	<i>SUP 10.7.8R</i>	R	(1) This <i>rule</i> deals with the extension of the <i>compliance oversight function</i> to cover <i>home finance activities</i> by the Approved Persons (Home Finance Activities) Instrument 2010.	First application period start date to the second application period end date	Second application period end date
			(2) This <i>rule</i> applies to a <i>person</i> who meets the following conditions immediately before the first application period start date:  (a) he would otherwise have been performing the part of the <i>compliance oversight function</i> described in (1) for a <i>firm</i> because of the extension described in (1) if that extension had been in force;  (b) he was not approved to perform the <i>compliance oversight function</i> for that <i>firm</i> but was approved to perform any of the other <i>controlled functions</i> for that <i>firm</i> ;  (c) the <i>firm</i> has assessed him as competent to carry on the activities in (a) and that assessment was current at that date.		
			(3) The functions relating to <i>home finance activities</i> brought into the <i>compliance oversight function</i> by the extension described in (1), as respects that <i>person</i> and that <i>firm</i> , are not treated as forming part of the <i>compliance oversight function</i> .		

			<p>(4) If this transitional <i>rule</i> has not already expired under column (5), this <i>rule</i> comes to an end as respects that <i>person</i> and that <i>firm</i> if and when an application is made for the <i>person</i> to perform the <i>compliance oversight function</i> for that <i>firm</i> and that application is granted. However, this transitional <i>rule</i> does not expire before the second application period start date.</p>		
			<p>(5) If the FSA has received a complete application for that <i>person</i> to perform the <i>compliance oversight function</i> between the second application period start date and the second application period end date and that application has not been finally decided by the time that the transitional period in column (5) would otherwise have come to an end, that transitional period is extended until the application has been finally decided.</p>		
			<p>(6) SUP TP 8PR and SUP TP 8QD contain various supplemental provisions applicable to this <i>rule</i>.</p>		
8N	SUP 10.10.8R	R	<p>(1) This <i>rule</i> deals with a <i>person</i> who meets the following conditions immediately before the first application period start date:</p> <ul style="list-style-type: none"> <li>(a) he would otherwise have been performing the <i>customer function (home finance business)</i> for a <i>firm</i> if that function had been a <i>controlled function</i> then;</li> <li>(b) he was not approved to perform any <i>controlled function</i> for that <i>firm</i>; and</li> <li>(c) either of the following conditions are met: <ul style="list-style-type: none"> <li>(i) the <i>firm</i> has assessed him as competent to carry on those activities and that assessment was current at that date; or</li> </ul> </li> </ul>	<p>First application period start date to the first application period end date</p>	<p>First application period end date</p>

			(ii) the <i>person</i> is still being trained, he is being appropriately supervised, the <i>firm</i> has assessed him as competent to carry on the activities in (a) that he is carrying on, taking into account that supervision and that assessment was current at that date.		
			(2) The <i>customer function (home finance business)</i> , as respects that <i>person</i> and that <i>firm</i> , is not treated as a <i>controlled function</i> .		
			(3) If this transitional <i>rule</i> has not already expired under column (5), this <i>rule</i> comes to an end as respects that <i>person</i> and that <i>firm</i> if and when an application is made for the <i>person</i> to perform the <i>customer function (home finance business)</i> for that <i>firm</i> and that application is granted.		
			(4) If the <i>FSA</i> has received a complete application for that <i>person</i> to perform the <i>customer function (home finance business)</i> between the first application period start date and the first application period end date and that application has not been finally decided by the time that the transitional period in column (5) would otherwise have come to an end, that transitional period is extended until the application has been finally decided.		
			(5) <i>SUP TP 8PR</i> and <i>SUP TP 8QD</i> contain various supplemental provisions applicable to this <i>rule</i> .		
8O	<i>SUP 10.10.8R</i>	R	(1) This <i>rule</i> deals with a <i>person</i> who meets the following conditions immediately before the first application period start date:  (a) he would otherwise have been performing the <i>customer function (home finance business)</i> for a <i>firm</i> if that function had been a <i>controlled function</i> then;	First application period start date to the second application period end date	Second application period end date

			<p>(b) he was approved to perform any <i>controlled function</i> for that <i>firm</i>; and</p> <p>(c) either of the following conditions are met:</p> <p>(i) the <i>firm</i> has assessed him as competent to carry on the activities in (a) and that assessment was current at that date; or</p> <p>(ii) the <i>person</i> is still being trained, he is being appropriately supervised, the <i>firm</i> has assessed him as competent to carry on the activities in (a) that he is carrying on, taking into account that supervision and that assessment was current at that date.</p>		
			(2) The <i>firm</i> must notify the <i>FSA</i> of each <i>person</i> falling into (1). The <i>firm</i> must give that notification between the second application period start date and the second application period end date.		
			(3) The <i>customer function (home finance business)</i> , as respects that <i>person</i> and that <i>firm</i> , is not treated as a <i>controlled function</i> between the first application period start date and the first application period end date and thereafter until the earlier to occur of the date on which the <i>firm</i> gives the notification under (2) and the second application period end date.		
			(4) If the notification in (2) is given in accordance with that paragraph, the approval for carrying out the other <i>controlled function</i> covers the <i>customer function (home finance business)</i> as respects that <i>person</i> and that <i>firm</i> .		
			(5) <i>SUP TP 8PR</i> contains various supplemental provisions applicable to this <i>rule</i> .		
8P	<i>SUP TP 8LR</i> to <i>SUP TP 8OR</i>	R	(1) This <i>rule</i> defines various terms used in <i>SUP TP 8LR</i> to <i>SUP TP 8OR</i> and sets out various other supplemental matters.	Not applicable	Not applicable

		<p>(2) An application for a <i>person</i> to perform a <i>controlled function</i> is finally decided on the earliest of the following dates:</p> <p>(a) when the application is withdrawn;</p> <p>(b) when the <i>FSA</i> grants approval;</p> <p>(c) where the <i>FSA</i> has refused the application and the matter is not referred to the <i>Tribunal</i>, on the date on which the right to refer the matter to the <i>Tribunal</i> expires;</p> <p>(d) where the <i>FSA</i> has refused the application and the matter is referred to the <i>Tribunal</i>, when the reference is determined by the <i>Tribunal</i> and the time for bringing an appeal has expired;</p> <p>(e) if the application is determined by the court, when the court makes that determination.</p>	
		<p>(3) The first application period start date is [the date the rules come into force].</p>	
		<p>(4) The first application period end date is [three months after the date the rules come into force].</p>	
		<p>(5) The second application period start date is [three months after the date the rules come into force].</p>	
		<p>(6) The second application period end date is [three months later].</p>	
		<p>(7) The notification under <i>SUP TP 8OR</i> must contain (a) the <i>person's</i> full name, (b) his individual register reference number and (c) the <i>firm's</i> register reference number. The register means the register maintained by the <i>FSA</i> under section 347 of the <i>Act</i> (The record of authorised persons etc).</p>	

			(8) The <i>firm</i> must submit a notification referred to in (7) by electronic means made available by the <i>FSA</i> .				
			(9) If the <i>FSA</i> 's information technology systems fail and online submission under (8) is unavailable for 24 hours or more, until such time as facilities for online submission are restored, a <i>firm</i> must submit the notification in the way set out in <i>SUP</i> 15.7.4R to <i>SUP</i> 15.7.9G (Form and method of notification). However, this paragraph (9) only applies to a failure that exists in the seven <i>business day</i> period ending on the date by which that notification must have been made.				
			(10) Any application for a <i>person</i> to perform the <i>compliance oversight function</i> or the <i>customer function (home finance business)</i> referred to in <i>SUP</i> TP 8LR to <i>SUP</i> TP 8OR is not treated as complete if it is not accompanied by the criminal record checks required by <i>SUP</i> TP 8QD.				
8Q	<i>SUP</i> TP 8LR to <i>SUP</i> TP 8OR; <i>SUP</i> 10.12 and <i>SUP</i> 10.13	D	<p>(1) <i>SUP</i> TP 8QD deals with applications for a <i>person</i> to perform the <i>compliance oversight function</i> or the <i>customer function (home finance business)</i> referred to in <i>SUP</i> TP 8LR to <i>SUP</i> TP 8OR.</p> <p>(2) Paragraphs (8) and (9) of <i>SUP</i> TP 8PR also apply to any application described in (1).</p> <p>(3)</p> <table border="1" data-bbox="571 1525 930 1944"> <tr> <td>(a)</td> <td>Any application for approval must be accompanied by a current criminal record disclosure in relation to the <i>candidate</i> which is dated not more than two months prior to the submission of the application. An application is not complete without such a disclosure.</td> </tr> </table>	(a)	Any application for approval must be accompanied by a current criminal record disclosure in relation to the <i>candidate</i> which is dated not more than two months prior to the submission of the application. An application is not complete without such a disclosure.	Not applicable	Not applicable
(a)	Any application for approval must be accompanied by a current criminal record disclosure in relation to the <i>candidate</i> which is dated not more than two months prior to the submission of the application. An application is not complete without such a disclosure.						

			<p>(b) If the <i>candidate</i> is a <i>sole trader</i> or if the <i>firm</i> in question is a <i>body corporate</i> and the <i>candidate</i> is its sole <i>director</i> the disclosure must be a ‘standard disclosure’ from the Criminal Records Bureau, which discloses all spent or unspent convictions.</p> <p>(c) For all other <i>candidates</i>, the disclosure must be a ‘basic disclosure’ from Disclosure Scotland, which discloses any unspent convictions.</p>		
8R	SUP TP 8LR to SUP TP 8QD	G	<p>(1) The effect of SUP TP 8KR(3) is that in the case of a <i>person</i> who is already approved to perform the <i>compliance oversight function</i>, the original grant of approval by the FSA to carry out the <i>compliance oversight function</i> will remain valid in relation to the extension of the <i>compliance oversight function</i> and no new approval to perform that <i>controlled function</i> will be required.</p>	Not applicable	Not applicable
			<p>(2) The effect of SUP TP 8OR(4) is that if the <i>firm</i> for which an <i>approved person</i> performs a <i>controlled function</i> complies with the notification requirements of that <i>rule</i> the grant of approval by the FSA to carry out that <i>controlled function</i> will cover the <i>customer function (home finance business)</i> and no new approval to perform that <i>controlled function</i> will be required.</p>		
			<p>(3) A notification is not made in accordance with SUP TP 8OR if the <i>firm</i> gets an automatic response from the FSA’s or the <i>firm</i>’s systems to say that the notification was not delivered.</p>		

			(4) An application for approval to carry out a <i>controlled function</i> to which <i>SUP TP 8LR</i> to <i>SUP TP8NR</i> applies should be made electronically in accordance with <i>SUP 10.12</i> (Application for approval and withdrawing an application for approval) or <i>SUP 10.13</i> (Changes to an approved person's details).		
			(5) The effect of <i>SUP TP 8QD(2)</i> is that if a <i>firm</i> wishes to make an application described in (4) but the <i>FSA</i> 's information technology systems fail the <i>firm</i> should wait until the systems are available again. However if the failure occurs in the seven <i>business days</i> before the end of the relevant transitional period and online submission is unavailable for 24 hours or more, until such time as facilities for online submission are restored, submission is to be in one of the ways set out in <i>SUP 15.7.4R</i> to <i>SUP 15.7.9G</i> (Form and method of notification). .		
...			(6) Paragraph (9) of <i>SUP TP 8PR</i> applies similar submission requirements for notifications required by <i>SUP TP 8OR</i> .		

## Annex F

### Amendments to the Credit Unions sourcebook (CRED)

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

#### 6.3 Approved Persons

...

##### Controlled functions

- 6.3.4 G *SUP 10.3 provides, in this context, that a function is a controlled function only when it is undertaken by a *credit union* in relation to a *regulated activity*. *Controlled functions* fall within two groups. The *significant influence functions* describe the roles performed by the *governing body* and *senior managers* of the *firm* who exert a significant influence over the *regulated activities* of the *firm*. The *customer-facing functions* describe the roles of individuals who deal with *customers* or with the property of *customers*. These *customer-facing functions* do not extend to activities in relation to accepting *deposits* or general insurance and therefore will not be relevant to *credit unions* with *permission* for *accepting deposits* only.*

...



# List of non-confidential respondents to CP10/2

Association of Mortgage Intermediaries	National Counties Building Society
Bank of Ireland	Northern Rock (Asset Management) plc
Bridgewater Equity Release	Northern Rock plc
Building Societies Association	Norwich & Peterborough Building Society
Burns-Anderson Limited	Openwork Limited
CIFAS	Paymex Group
Callcredit Limited	Payplan Limited
Charter Court Financial Services Limited	Prudential
Chartered Institute of Housing	Royal Bank of Scotland
Citizens Advice	Sage Financial Services Limited
Compos Mentis	Shelter
Consumer Focus	Skipton Group
Council of Mortgage Lenders	Society of Professional Mortgage Arrears
Darlington Building Society	St James's Place Wealth Management
Financial Services Consumer Panel	Teachers Building Society
Furness Building Society	The Association of Arrears Mediators
GE Money Home Lending Limited	The Association of Short Term Lenders
HSBC Bank plc	The Building Societies Association
Homeloan Management Limited	The Co-operative Financial Services
Housing Law Practitioners Association	The National Federation of Property Professionals
Information Commissioner's Office	Tipton & Coseley Building Society
Intrinsic	Tiuta plc
Ipswich Building Society	West Bromwich Building Society
Jackson Cohen Associates Limited	Yorkshire Building Society
Leeds Building Society	
Money Advice Trust	

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