

## FSA regulation of mortgage arranging and advising – do I need to be authorised?

### Do I need to read this factsheet?

Since October 2004 we (the FSA) have been responsible for regulating the sale of mortgages. You should read this factsheet if you want to be involved in any way in the mortgage sales process, such as:

- **introducing people to mortgage brokers or lenders;**
- **recommending specific mortgages;**
- **helping people apply for and obtain mortgages; and**
- **you are remunerated for these activities.**

If you want to start doing any of these things you should consider whether you need to seek authorisation or become an appointed representative of an FSA-authorised firm. You need to consider this – even if these activities are secondary to your main business.

### What is the purpose of this factsheet?

This factsheet provides a brief introduction to the regulation of mortgage sales. It is aimed at firms, businesses and organisations new to FSA regulation. (It does not cover the position of solicitors, accountants and actuaries, or that of local authorities.) We hope it will help you to consider whether you need to apply to us for authorisation.

This factsheet also outlines the possible choices available to you besides seeking direct authorisation from us. For example, you may wish to consider whether you can benefit from certain exclusions under the legislation or become an appointed representative. If you were to do the latter, your business would still be subject to regulation. But instead of being authorised by us, your compliance with our rules would be the responsibility of another FSA-authorised firm.

### FSA regulation of mortgage arranging and advising – do I need to be authorised?

There are other activities relating to 'regulated mortgage contracts' that are not covered by this factsheet. These include entering into a regulated mortgage contract (mortgage lending) and administering a regulated mortgage contract. Further details about these regulated activities are in our Perimeter Guidance on regulated activities associated with mortgages, contained in our Handbook of rules and guidance – in PERG 4.7 (entering into) and PERG 4.8 (administering).

**Please note that this factsheet is not a definitive or comprehensive statement of the law, nor does it give legal advice or purport to do so. If you are in any doubt about whether you are carrying on a regulated activity, you should consult the Perimeter Guidance or the relevant legislation. You may also wish to seek independent legal advice as appropriate.**

### Which mortgages are affected?

Under legislation, firms need to consider whether they require FSA authorisation to carry out activities relating to regulated mortgage contracts. Not all loans secured on land are caught by the definition of regulated mortgage contract. In broad terms, a regulated mortgage contract must meet the following conditions at the time it is entered into:

- **the borrower must be an individual or a trustee;**
- **the lender must take a first legal charge over property in the UK; and**
- **at least 40% of the property must be occupied by the borrower or a member of their immediate family, or intended for their occupation.**

So, the definition of mortgage does not cover the following:

- **buy-to-let mortgages, (unless the tenant is a member of the borrower's immediate family, or the borrower intends to occupy the property at some stage);**
- **second charge loans; and**
- **loans to companies (except in the case of trustees).**

On the other hand, as well as loans for house purchase, where the security is a first charge over the borrower's residential property, the following loans potentially fall within the definition of 'regulated mortgage contract' and FSA regulation:

- **lending for home improvements (including, for example, some in-store credit);**
- **lending for debt consolidation;**
- **business lending to sole traders and to partnerships in England and Wales;**
- **secured overdrafts and secured credit cards; and**
- **bridging loans.**

So the definition of 'regulated mortgage contract' is wide in its scope.

### Do I need to seek authorisation from the FSA?

When deciding whether you need to seek FSA authorisation you should consider the following four questions:

1. **Do I want to carry on a regulated activity in the UK?**
2. **If so, will I be carrying on a regulated activity by way of business?**
3. **If so, will my regulated activities be excluded?**
4. **If not, what options do I have other than becoming authorised?**

#### Step one: Will I be carrying on a regulated activity in the UK?

You may need to be authorised by us if your business will be carrying on one of the following regulated activities in the United Kingdom:

- **arranging for borrowers to enter into or vary the terms of a regulated mortgage contract; and/or**
- **advising on the merits of entering into or varying the terms of a regulated mortgage contract.**

It is a criminal offence to carry on any of these activities without being authorised or exempt (e.g. as an appointed representative) for these purposes.

## Arranging regulated mortgage contracts

Arranging a regulated mortgage contract involves any of the following activities:

- **making arrangements for someone to enter into a regulated mortgage contract as borrower;**
- **making arrangements for a borrower to vary the terms of their existing regulated mortgage contract; and**
- **making arrangements with a view to a participant in those arrangements entering into a regulated mortgage contract as borrower. This does not require that the arrangements will ‘bring about’ the mortgage, and so potentially covers a wide range of activities that intermediaries undertake. For example, it can include simply ongoing arrangements of builders and estate agents to introduce their customers to a local lender, in return for a fee or commission for each customer introduced.**

In this factsheet we refer to all these activities as ‘arranging’ for short. Arranging includes helping borrowers complete application forms and negotiate the terms of a contract. It also includes introducing, although there are some important exclusions (see Step 3).

## Advising on regulated mortgage contracts

Not all kinds of advice are regulated under our regime. For advice to come within our remit, the legislation says it must be:

- **given to the person in their capacity as borrower or potential borrower; and**
- **advice on the merits of:**

**i) entering into a particular regulated mortgage contract, or**

**ii) varying the terms of a regulated mortgage contract entered into by them.**

The precise interpretation of the legislation is a matter for the Courts to decide. However, in our view, this means that giving advice requires an element of opinion on the part of the adviser. In other words, it is a recommendation about a course of action. The advice must also relate to a particular mortgage.

The following table gives some examples of the sort of statement that, in our view, would and would not be considered advice under our regime:

Statement	Regulated or not
I recommend you take out the ABC Building Society 2 year fixed rate mortgage at 5%.	<b>Yes. This is advice that steers the borrower in the direction of a particular mortgage.</b>
I recommend you do not take out the ABC Building Society 2 year fixed rate mortgage at 5%.	<b>Yes. This is advice that steers the borrower away from a particular mortgage.</b>
I recommend you take out either the ABC Building Society 2 year fixed rate mortgage at 5% or the XYZ Bank standard variable rate mortgage.	<b>Yes. This is advice that steers the borrower in the direction of more than one particular mortgage.</b>
I recommend you take out an endowment mortgage and here are two particular products to choose from.	<b>Yes. This is advice that steers the borrower in the direction of more than one particular mortgage.</b>

I recommend you take out an endowment mortgage.	<b>No. This is not advice that steers the borrower in the direction of a particular mortgage.</b>
I suggest you take out (or do not take out) a mortgage with ABC Building Society.	<b>No. This is not advice that steers the borrower in the direction of a particular mortgage.</b>
I suggest you take out (or do not take out) a variable rate mortgage.	<b>No. This is not advice that steers the borrower in the direction of a particular mortgage.</b>
I recommend you take out (or do not take out) a mortgage.	<b>No. This is not advice that steers the borrower in the direction of a particular mortgage.</b>
I would always recommend buying a house and taking out a mortgage as opposed to renting a property.	<b>No. This is an example of generic advice that does not steer the borrower in the direction of a particular mortgage.</b>

When scripted questioning or decision trees identify one or more particular mortgages, some of the statements described above as not regulated may amount to regulated advice. For more details about scripted questioning, decision trees and other examples of typical statements and whether they are regulated, see PERG 4.6.21 G.

### Step two: Will I be carrying on a regulated activity by way of business?

You will be carrying on the regulated activities of arranging and advising if you do so by way of business. If you do not, then authorisation is not required. For more details about the business test, see PERG 4. With arranging and advising, these are regulated activities where they represent the carrying on of business in their own right. Relevant factors include:

- whether the activity is continuous;
- the existence of a commercial element; and
- the scale of the activity, and its proportion compared with other non-regulated activities the firm carries on.

### Step three: Are the regulated activities that I want to carry on excluded?

The legislation contains some important exclusions from the activities of arranging. In particular, there are important exclusions if you want to do no more than introduce customers or clients to firms. The exclusions may be relevant, for example, to builders or estate agents that introduce potential borrowers to mortgage brokers and lenders. There are two types of exclusions for introducers outlined below in broad terms.

First, introducers are excluded from the regulated activity of arranging regulated mortgage contracts where they introduce borrowers to authorised lenders and brokers, subject to four conditions:

- They must not receive any money from the prospective borrower in connection with the mortgage other than money owing to them on their own account. In our view, money payable to an introducer on their own account includes money received in connection with making the introduction. An example of money not received on own account would be sums the broker or lender pays the introducer in connection with a valuation for the purposes of the mortgage, where the introducer is not the valuer.

- They must disclose to the borrower where they are members of the same group of companies as the firm the prospective borrower is introduced to (firm B).
- They must disclose details of any payment they receive from firm B.
- They must indicate any other reward or advantage arising out of the introduction, for example a reciprocal business arrangement or training provided by firm B.

Introducers are also excluded from the scope of regulation when:

- they introduce clients to FSA-authorised firms; and
- the introduction is made with a view to the borrower being given independent advice.

The requirement that the advice is independent means that introductions to a lender do not fall within this exclusion, although introductions to an authorised mortgage broker may do so. More detailed guidance about these exclusions can be found in our Guidance on Regulated Activities connected with Mortgages in chapter 4 of the Perimeter Guidance manual of the FSA Handbook.

### Step four: What options do I have other than becoming authorised?

If you decide that you want to carry on regulated activities in the UK by way of business, you still have another option besides becoming authorised. FSA-authorised firms, for example lenders or large intermediaries, may be willing to appoint you as their appointed representative and act as your Principal. As an appointed representative, you would not be directly regulated by us. Instead, your Principal would take regulatory responsibility for your activities as an appointed representative.

For more information about appointed representatives, please refer to;  
<http://www.fsa.gov.uk/Pages/doing/regulated/notify/reps/index.shtml>

### What do I do next?

If you decide that you need to be authorised by us you will need to obtain a copy of our application pack from our website: <http://www.fsa.gov.uk/Pages/Doing/how/index.shtml>

If you have a query about completing the application pack, please contact our Authorisation Enquiries Helpline on 020 7066 3954 or by email to **corporate.authorisation@fsa.gov.uk**

The applicant can ask a professional person to fill in the application form on its behalf, but the applicant must remain closely and actively involved in the application.

It will not always be clear whether a firm's prospective regulated activities will require authorisation. We have a Perimeter Enquires team to help in such cases. You can contact them on 020 7066 0082 or by email at **perimeterguidance@fsa.gov.uk** for individual guidance relating to a firm's own particular circumstances or plans. However, we will expect a firm to have taken reasonable steps to research and analyse a topic before approaching us for individual guidance. We should not be viewed as the first port of call, except where only we can give guidance.

If you want to sell or administer general insurance you may also need to be authorised for these (see the factsheet 'FSA regulation of insurance selling and administration – do I need to be authorised?').



The Financial Services Authority  
25 The North Colonnade  
Canary Wharf  
London  
E14 5HS  
United Kingdom

FSA Switchboard Number  
+44 (0) 20 7066 1000

[www.fsa.gov.uk/mgi](http://www.fsa.gov.uk/mgi)

Registered as a Limited Company in  
England and Wales No. 1920623.  
Registered Office as above.

