



Response to the review of the Consumer Credit Act changes introduced in 2004

This response is submitted on behalf of the Association of Finance Brokers (AFB). AFB is the trade association representing intermediaries operating in the secured loan industry. In the secured personal loans market, intermediaries are by far the largest distribution channel – in 2004, intermediaries were responsible for approximately £3 billion of the £4.6 billion advanced. In addition to second charge mortgages, many finance brokers also provide access to other credit products, such as buy-to-let mortgages, first charge mortgage loans and unsecured personal loans. Almost all of our members are both licensed by the Office of Fair Trading, and authorised by the FSA for their activities in relation to first charge mortgages.

Our members act on behalf of the consumer in selecting an appropriate lender and product to meet the individual consumer's requirements, and provide access to associated protection products such as payment protection insurance and life insurance. For many consumers, arranging a mortgage or secured loan can be a daunting process, particularly as their home could be at risk in the event of financial difficulty. For this reason, consumers greatly value the services of a professional intermediary who is independent of the lender, and rely upon their knowledge and experience when arranging mortgage credit.

We welcome the opportunity to comment on the consumer credit regulations introduced in 2004. This response focuses on the Advertisement Regulations 2004 as it is these regulations which have directly impacted on our members as secured loan intermediaries.

We supported the government's objective to introduce greater consistency and transparency in credit advertising, as set out in the Consumer Credit White Paper. However, we do have concerns over whether the Advertising Regulations have actually delivered these objectives to consumers, and the impact which the changes have had on business who advertise consumer credit.

For consumers to make informed decisions, they must be provided with clear, accurate information on credit products. Advertising has a fundamental role to play in providing information to consumers at the earliest stage of the buying process. We are concerned about the inconsistencies between the CCA advertising requirements and the FSA conduct of business rules relating to financial promotions for qualifying credit.

Our members provide access to both first and second charge mortgages, often advising the consumer on a suitable credit product to meet their individual needs and circumstances. To our knowledge, all lenders who are authorised by the FSA for first-charge business, and are also active in the second-charge mortgage market, have set up separate legal entities for the sale of second-charge mortgages. Therefore, credit advertisements for their second-charge products will be regulated under the CCA regime. Credit intermediaries will generally advertise both qualifying and non-qualifying

credit together. The inconsistencies between the FSA and OFT requirements make it difficult for firms to deliver clear and transparent information to consumers through credit advertisements, and increase compliance costs for firms.

We welcome the steps already taken by both FSA and OFT through the joint action plan to address some of the issues which exist in this respect. In particular, we are pleased to see the implementation of the changes introduced following FSA's quarterly consultation paper in April 2006. Whilst these changes have addressed a small number of inconsistencies, many more remain. The joint FSA/OFT guidance on dually regulated advertisements acknowledges this, and the attached appendix lists the specific issues. We would be pleased to work with both OFT and FSA to find ways of delivering a simple, consistent and transparent credit advertising regime which is effective for consumers and businesses.

The concerns we have outlined above also raise the wider issue of the UK's divided approach to financial promotions for credit secured on land, and the effects of this approach on both consumers and businesses. The possible adoption of the Consumer Credit Directive in the EU will further crystallise this issue and we would welcome a meeting to discuss this further with DTI, OFT and FSA.

AFB Response to the CCA 04 Review – Appendix 1

	CCA Advertising Requirements	Regulation Ref.	FSA Financial Promotion Rules For 'Qualifying Credit'	FSA Handbook Ref.	Observation
General Principles	Advertisements must use plain and intelligible language, be easily legible, and specify the name of the advertiser	Regulation 3	Financial promotions must be clear, fair and not misleading	MCOB 3.6.3 (1)	Inconsistent terminology leads to a greater risk of inconsistent interpretations by businesses
Requirement to display APR	Advertisements may only contain one APR which must be representative		An APR must be displayed for each product advertised in the promotion		This can lead to confusion for consumers where qualifying and non-qualifying credit are advertised in the same promotion
APR Triggers	The typical APR is triggered if the advert: specifies any other rate of charge, includes any item referred to in Schedule 2 (Para 5-7) of the regulations, indicates that credit is available to persons who might otherwise consider access to credit restricted, or where credit is more favourable either generally or for a limited period, or where it includes any incentive to apply for credit.	Regulation 8 (1)	The requirement to display an APR is triggered if a qualifying credit promotion contains price information or makes reference to the availability of credit for customers who might otherwise consider the access to credit restricted.		Under the CCA regime, displaying a loan value would not trigger the APR. Under the FSA rules for qualifying credit, any price info would trigger the requirement to display an APR.
APR Calculation	The typical APR is the APR at or below which an advertiser reasonably expects at the date on which an advert is published, that credit would be provided under at least 66% of the agreements he will enter into as a result of the advert.	Regulation 1	A representative APR must be at a rate which 66% of customers responding to the promotion and enter into the agreement would be charged.	MCOB 3.6.23	
APR Denoted	The APR must be denoted with "%APR". Any representative or typical APR must be accompanied with the word "typical". Where an APR is subject to change, it must be accompanied with the word "Variable."	Regulation 8 (3) and (5)	APR must be displayed as follows: "The overall cost for comparison is x%APR"	MCOB 3.6.17	FSA and CCA requirements mean that different wordings are required when displaying the APR.
APR prominence	The APR must be displayed with greater prominence than : i) any other rate of charge ii) any of the items listed in Schedule 2 to the regulations, and, iii) any incentive offered . The APR must be displayed in characters at least 1.5 times the size of these items.	Regulation 8 (5)	The APR must have no less prominence than the trigger	MCOB 3.6.17 (1) (b)	Prominence is described differently, and the text size is prescribed in the CCA regulations.
Range of APR	A range of APRs is not permitted unless the advertisement specifies both the lowest APR, (which must meet the 10% rule), and the highest APR at which credit would be provided.	Regulation 8 (2)	No reference to 'From' or 'to' APRs. APR must be positioned immediately after any other rate quoted.	MCOB 3.6.17 (1) (c)	

AFB Response to the CCA 04 Review – Appendix 1

	CCA Advertising Requirements	Regulation Ref.	FSA Financial Promotion Rules For 'Qualifying Credit'	FSA Handbook Ref.	Observation
N/A		N/A	FSA rules require that an extra warning be displayed where the APR can vary: "The actual rate available will depend on your personal circumstances. Ask for a personalised illustration."	MCOB 3.6.25	This is an additional requirement to the CCA regulations.
Wealth Warnings	Required risk warning: 'YOUR HOME MAY BE REPOSSESSED IF YOU DO NOT KEEP UP REPAYMENTS ON A MORTGAGE OR ANY OTHER DEBT SECURED ON IT'	Regulation 7 (2)	Require risk warning: 'Your home may be repossessed if you do not keep up repayments on your mortgage.' (This can now be adapted to read 'YOUR HOME MAY BE REPOSSESSED IF YOU DO NOT KEEP UP REPAYMENTS ON YOUR MORTGAGE OR ANY OTHER DEBTS SECURED ON IT')	MCOB 3.6.13	The CCA rules impose the additional requirement to display this risk warning in capital letters. Also CCA regulations require the wording 'a mortgage' whereas FSA rules require the wording 'your mortgage'.
Exemptions	Exemption for TV/ radio where primary purpose of the programming is not to promote lending. Exemption for pictures, photographic or cinematographic film.	Regulation 7 (8)	The prescribed warnings are not required in the case of an advert which is published by means of television or radio broadcast in the courses of programming the primary purpose of which is not advertising, or by exhibition of a film. The exclusion applies where the advert appears in a commercial break between programming which are not primarily for advertising purposes. E.g Shopping Channel	MCOB 3.6.15 and 3.6.16	Different conditions to meet exemption requirements for each regime.
Restricted Expressions	Overdraft, interest free, no deposit, loan guaranteed, pre- approved , gift, present or another similar expressions.	Regulation 9 (1)	Overdraft, Interest Free, No deposit, Mortgage Guaranteed, pre cleared, gift, present, early repayment charge, higher lending charge	MCOB 3.6.8 and 3.6.9	The terms are inconsistent. Some words are slightly different for CCA than FSA, e.g. 'pre approved' and 'pre cleared'.
Proximity	No regulation on proximity of items	N/A	Proximity ruling for the APR, and fee information. Advantages have to displayed next to any disadvantages.	MCOB 3.6.17 (1) (c) and 3.6.27	
Specific Requirement To Display Balanced Information	No specific requirements.	N/A	Disadvantages should be shown against any advantages that are mentioned. e.g. extended loan period to achieve lower monthly payments.	MCOB 3.6.7	

AFB Response to the CCA 04 Review – Appendix 1

	CCA Advertising Requirements	Regulation Ref.	FSA Financial Promotion Rules For 'Qualifying Credit'	FSA Handbook Ref.	Observation
Requirements For Advertisements Targeted At Sub-Prime or Non-conforming Consumers	An APR and wealth warning are triggered. The APR and wealth warning must be more prominent than the trigger, and at least 1.5 times the size of the characters of the trigger.	Regulation 8 (c) (i), Regulation 8 (5)	An APR is required, which must be displayed next to the trigger on the advertisement. The APR must be displayed with no less prominence than the trigger.	MCOB 3.6.17	The FSA rules require prominence and proximity to be taken into account, whereas the CCA regulations dictate the sizing of APR but do not dictate proximity.
Fees	A statement indicating the description and amount of any other payments or charges which may be payable under the transaction advertised.	Schedule 2 (6)	If a fee is charged for advising or arranging credit then a prominent indication must be given of either of the following. The fee figure or %. A representative fee based on the business expected to arise from the promotion. "There will be a fee for mortgage advice. The precise amount will depend on your circumstances but we estimate it will be £X"	MCOB 3.6.27	FSA allows a fee for intermediary services to be displayed as a percentage. CCA requires the exact amount to be displayed.
Total Amount Payable	If advertising displays repayment examples then the total amount payable will need to be included for each repayment shown.	Schedule 2 (7)	N/A	N/A	The FSA rules do not require the total amount payable to be included in the same circumstances.