



**Response to the OFT - Consumer credit licences
Draft Guidance on fitness and requirements
Consultation document - June 2007
OFT920con**

This response is submitted on behalf of the Association of Finance Brokers (AFB). The AFB is the trade association representing intermediaries operating in the secured loan (second charge mortgages over residential properties) industry. All our members hold current consumer credit licences.

In the secured 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. The current market is around £6 billion per annum of which £4 billion is intermediary sourced. The AFB represents brokers who are responsible for approximately 75% by volume and value of secured loans in the intermediary channel. Intermediaries active in this market act on behalf of the consumer in selecting an appropriate lender and product from within their panel of lenders to meet the individual consumer's loan requirements. Our members also provide access to associated protection products such as payment protection insurance.

We welcome the opportunity to comment on the draft guidance. We have restricted our comments to those areas where we believe comment is justified.

Question 1: Is the draft guidance clear and concise?

The guidance is both clear and concise. However in delivering brevity, the tone on occasions could be considered "brusque" and rather directional. We find the approach in the FSA Handbook, differentiating between Rules, Guidance and Evidential Provisions as helpful. We therefore wonder if such an approach could be considered moving forwards, to give perspective on the priority and weighting that the OFT might want licence holders to apply to the requirements.

Question 2: Does the draft guidance have any significant omissions?

No.

Question 3: Is the draft guidance in need of amplification or clarification and, if so, in what respect?

Under paragraph 2.28, attention is drawn to specific guidance previously issued. We consider that the 1997 non-status lending guidelines in particular need to be more strongly re-emphasised to license holders as still being current and relevant.

Question 4: Are there any points in the draft guidance with which you disagree and, if so, in what respect?

We were grateful to be afforded an opportunity to meet with OFT representatives to discuss, in particular, the draft section on Irresponsible Lending. (paragraphs 2.23 to 2.26) We do not consider the inclusion of this section in the licensing proposal as having been clearly enough sign-posted to the industry. We would prefer to have a fuller and wider consultation before it is introduced as it has significant implications for both the non-status consumer and for a large part of the lending industry.

In the event that this proposal cannot be withdrawn, we consider that the proposed wording would benefit from amendment as set out below:

2.23 As drafted

2.24 We consider irresponsible lending to include failing to make a proper and diligent assessment of the potential borrower's ability to make **all** the periodic payments as they fall due and to consider their attitude to risk and the potential repayment strategy for any capital element of the debt.

2.25 The OFT would consider it irresponsible for lenders and intermediaries not to take reasonable care in making loans or advancing lines of credit in revolving credit card arrangements. Reasonable care would include considering a borrower's creditworthiness, the presence of an appropriate repayment strategy and their ability to meet the full terms of the agreement. For example, we would not consider affording additional funds to borrowers who have recently incurred CCJ's as responsible lending without additional evidence being provided to support the approval. Where borrowers are exhibiting signs of "debt distress" such as missed mortgage repayments the lender and intermediary has a duty of care to ensure that the proposed solution is affordable, therefore not lending irresponsibly.

2.26 As drafted

We would be happy to work with you to further develop these ideas, as required.

Our rationale for these amendments is that:-

- Many lenders do not have a formal requirement for a repayment *plan*. Responsible lending would rightly insist on a repayment *strategy*, which could range from capital repayment, a freestanding investment vehicle (endowment, ISA, pension), the sale of unconnected assets to repay the debt (a property portfolio or business), inheritance, though to the sale of the underlying securitised property to repay the loan or even death of the applicant repaying a lifetime (equity release) mortgage debt. The guidelines makes no allowances for debts such as buy-to-let arrangements where there may well be no intention to repay the debt.
- We feel that the guidelines cannot therefore insist on an assessment of the ‘ability to repay a loan’ when compulsion to repay is not evident. OFT should also consider that a good intermediary will help a borrower make an assessment of their attitude to risk which will affect their repayment strategy. For a comparable investment arrangement, an enforced low-risk product for a high-risk applicant would be as incorrect as the contrary.
- Whilst specifying that lenders are required to check a borrower’s creditworthiness is reasonable, an intermediary does not have the facility to do so on an automated basis, as they do not have access to full data from credit reference agencies. We have long argued that intermediaries would benefit from this facility but it is simply not available from the credit bureaus. Therefore, to impose this requirement would result in an impossible requirement for intermediaries.
- The example highlighted in the draft related to minimum payments being made on a credit card. Whilst this can be an indication of financial difficulty, it can also be an indication of a financially savvy applicant benefiting from zero percent interest rates. The draft makes no distinction of this.
- With regard to advancing further funds to those in difficulty, we are concerned that the draft as worded risks bringing a blanket end to all consolidation arrangements. An applicant with large unsecured credit card debts could benefit from the securitisation of the debt by a first or second charge loan. However, this would involve an intermediary advancing further debt to someone in difficulty – which even if this was in their interests, the guidelines forbid. We acknowledge that it might be irresponsible to advance further new money in addition to consolidating existing debt. However, there must be responsibility on the consumer for example to cancel the credit card facilities that have been re-financed, otherwise, this would be providing “new lines of credit”.
- As the draft guidelines stand, we fear that some intermediaries and lenders would simply withdraw from the UK market due to risk of reputational damage. They would consider that the costs linked to the requirement to build compliant processes would outweigh any commercial benefit in continuing to provide

support and advice to such consumers. We would also be highly concerned that imposing these requirements as stated in the current form could create such an un-level regulatory playing field that some borrowers were obliged to return to alternative funding – be that inappropriate first-charge re-mortgages incurring early repayment charges for example, or the other extreme of door-step lenders advancing very expensive unsecured credit. Either way, the potential for consumer detriment is considerable.

Accordingly, we consider that the offered text will achieve the desired result in a more “balanced” way.

We are also concerned re 2.7, where it appears that the OFT will be able to take account of a “criminal offence” where the individual has been prosecuted but found not guilty. This appears outside the scope of natural justice, and we would wish to challenge this provision.

Question 5: In particular, do you disagree with the risk assessment model proposed (at paragraph 2.9 onwards)? If so, in what way do you consider that it could be improved or refined?

We have no issues with this model, but would recommend deletion of the extraneous “the” in the second line of 2.11.

Question 6: Are there any parts of the draft guidance that are not needed?

No

Question 7: Are there any areas that could be covered by supplementary fitness guidance and, if so, why?

Under sections 3.10 and 3.11 it would be helpful if clarification could be provided on which data would be drawn from the Financial Ombudsman Service. We are concerned that data regarding Insurance complaints run a risk of “double jeopardy”, as the FSA may take appropriate action against the holder of an insurance authorisation, and the firm may be conducting their lending arrangements in an entirely satisfactory manner.

AFB
21/09/07