



Designated Professional Body (Consumer Credit) Handbook

EFFECTIVE FROM 1 APRIL 2016

THE INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND &
WALES

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF SCOTLAND

THE INSTITUTE OF CHARTERED ACCOUNTANTS IN IRELAND

This Handbook only deals with 'credit-related regulated activities'. Firms who wish to undertake investment business, mortgage or insurance distribution related activities should refer to the Designated Professional Body (Investment Business) Handbook.

Designated Professional Body (Consumer Credit) Handbook

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INTRODUCTION

1. The Institute of Chartered Accountants in England and Wales, The Institute of Chartered Accountants of Scotland and the Institute of Chartered Accountants in Ireland are Designated Professional Bodies under Part XX of the Financial Services and Markets Act 2000 (the Act). Previously those arrangements only dealt with investment business activities. Following a change of the law on 1 April 2014, credit-related regulated activities are now within the scope of the Act.
2. Part XX allows the Institutes to provide arrangements by which firms may take advantage of an exemption from the general prohibition on carrying on activities that are regulated under the Act. This removes the need for authorisation from the Financial Conduct Authority (FCA). Such authorisation would otherwise be needed if firms provide professional services to consumer clients and in providing those services are involved in carrying on credit-related regulated activities.
3. A firm cannot be exempt under this Handbook and also authorised by the FCA. An FCA authorised firm that wants to undertake credit-related regulated activities must add the relevant activities to its FCA permission.
4. The scope of exempt credit-related regulated activities permitted to consumer credit firms is derived from the activities set out in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (RAO) and which in turn are permitted by this Handbook. Firms need to be aware that a breach of any of the regulations in Part 3, including undertaking credit-related regulated activities that are only allowed to FCA authorised firms, may be a criminal offence under the Act.
5. This Handbook details how firms may undertake exempt credit-related regulated activities. It replaces the arrangement set out previously in the Institutes' group consumer credit licences. The regulations set out in this Handbook have been approved by the FCA for the purposes of section 332(5) FSMA, to the extent applicable to members after taking into account the guidance to which members are required by the regulations to have regard. The FCA has not approved other parts of the Handbook.
6. Firms do not need a specific licence to undertake exempt credit-related regulated activities. If they meet the eligibility criteria, then such activities can be undertaken, provided that they are undertaken as set out in this Handbook.
7. A service may only be provided in a manner incidental to the activity of the firm generally, and which arises out of, or is complementary to, another professional service, which is not itself a regulated activity, provided to a specific consumer client.

An activity is only a credit-related regulated activity for the purposes of this Handbook if the client is a consumer client as defined. If the client is not a 'consumer client' as defined then the activity is not a credit-related regulated activity and this Handbook does not apply to the activity.

Territorial Scope

8. A firm is only eligible to benefit from Part XX of the Act in respect of regulated activities carried on in the UK, under the terms of this Handbook.

Changes to the Handbook

9. Changes to the Handbook will be notified to firms in DPB Update, any successor publication or through the Institutes' journals.

What credit-related regulated activities can I undertake?

10. Consumer credit firms can only undertake certain credit-related regulated activities, which are known as exempt credit-related regulated activities. These are set out in Table A of Schedule 1. In addition, regulation 4.12 limits the transactions that consumer credit firms can enter into as lender and regulation 4.15 prohibits the provision of debt management plans.
11. Also, a firm can only undertake exempt credit-related regulated activities if these:
 - are incidental to the provision of professional services; and
 - arise out of or are complementary to the provision of a professional service to the consumer client in question.

Schedule 2 provides guidance on the meaning of 'incidental'.

What do I have to do to comply with this Handbook?

12. Part 4 contains the Conduct of Business requirements which a consumer credit firm must follow when conducting exempt credit-related regulated activities.
13. This Part includes requirements and guidance on agreements with consumer clients (4.01), status disclosure (4.02), complaints resolution (4.05 – 4.07), and accounting for commission (4.08).
14. Schedule 4 has suggested wordings for disclosure of information to consumer clients.

Where can I get further help?

15. There is further guidance on the Institutes' websites.

www.icaew.com/consumercredit

www.carb.ie

www.icas.com/regulation/consumer-credit

PART 1 - INTERPRETATION AND DEFINITIONS

Interpretation

Words and expressions have the meanings given by the *Act*, *the RAO* and the Interpretation Act 1978 unless defined below.

In each Part words importing the singular include the plural and vice versa. Words importing the masculine gender include the feminine and neuter. Words importing the neuter gender include both the masculine and feminine genders. Headings do not affect the interpretation of this *Handbook*. This *Handbook* will be governed by, and interpreted in accordance with, the law of the country of the appropriate *Institute*.

Any references to legislation, regulations, requirements, bye-laws, rules, *Handbook* or other documents, will apply to any re-enactment, re-issue or amendment.

Any notice or document may be served on the *Institute* by sending it to the appropriate address:

The Institute of Chartered Accountants in England and Wales	Professional Conduct Department, Metropolitan House, 321 Avebury Boulevard, Milton Keynes, MK9 2FZ
The Institute of Chartered Accountants of Scotland	CA House, 21 Haymarket Yards, Edinburgh, EH12 5BH
The Institute of Chartered Accountants in Ireland	Chartered Accountants Regulatory Board, The Linenhall, 32-38 Linenhall Street, Belfast, BT2 8BG

or as otherwise notified to *consumer credit firms*.

In the *Handbook*, regulations are printed in bold type and guidance is printed in light type.

Definitions

In each Part of this Handbook, unless the context otherwise requires, the following words and phrases have the meaning shown next to them whenever they appear in italics.

Act	The Financial Services and Markets Act 2000
Appeal Committee	<ul style="list-style-type: none">• The Appeal Committee appointed under the <i>Bye-laws</i> of the Institute of Chartered Accountants in England and Wales• The Appeal Tribunal of the Institute of Chartered Accountants of Scotland appointed under the Discipline and Appeal Tribunals Regulations• The Quality Assurance Appeal Committee appointed under the Public Practice Regulations issued under the <i>Bye-laws</i> of the Institute of Chartered Accountants in Ireland
Business day	A day when banks are generally open for business (excluding weekends) in England, Wales, Scotland or Northern Ireland (as appropriate)
Consumer client	<ul style="list-style-type: none">• An individual (that is a natural person)• A partnership consisting of two or three persons of which at least one partner is an individual• An unincorporated body that does not consist entirely of bodies corporate and that is not a partnership <p>An example of the last item would be an unincorporated charity</p> <p>For the purposes of debt administration only, a consumer client also includes any person including a body of persons corporate.</p>
Consumer credit firm	<p>A firm that is eligible under this <i>Handbook</i> to undertake exempt credit-related regulated activities, excluding any entity that is authorised by the <i>FCA</i></p> <p>The eligibility requirements for firms are set out in regulation 2.02. These eligibility requirements are more limited than those set out in section 327(2) of the <i>Act</i></p>
Designated Professional Body (DPB)	A body designated by HM Treasury under section 326 of the <i>Act</i>

- Exempt credit-related regulated activities
- The following activities (as specified in the Financial Services and Markets Act (Regulated Activities) Order 2001 no 544 (as amended)) that a *consumer credit firm* is allowed to conduct under the arrangements in this *Handbook*:
- (a) credit broking (article 36A);
 - (b) debt adjusting (article 39D(1) and (2));
 - (c) debt counselling (article 39E(1) and (2));
 - (d) debt administration (article 39G(1) and (2));
 - (e) entering into a regulated credit agreement as lender (article 60B(1) (but see note below));
 - (f) exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement (article 60B(2) (but see note below));
 - (g) providing credit information services (article 89A);
 - (h) agreeing to carry on a regulated activity (article 64) so far as relevant to any of the activities in (a) to (g);

which is carried on by way of business (see Schedule 3) and relates to an investment of a specified kind or, in the case of (g), relates to information about a person's financial standing.

Consumer credit firms should consider regulation 4.12 which limits the activities that can be undertaken in relation to entering into a regulated credit agreement as lender or exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement

- Firm
- A partnership;
 - A limited liability partnership;
 - A *member* who is a sole practitioner; or
 - A body corporate;
- carrying on the profession of accountancy

FCA Financial Conduct Authority

Handbook All or any Part of the Designated Professional Body (Consumer Credit Handbook as amended from time to time

- Institute
- The Institute of Chartered Accountants in England and Wales (ICAEW)
 - The Institute of Chartered Accountants of Scotland (ICAS)
 - The Institute of Chartered Accountants in Ireland, operating as Chartered Accountants Ireland. The functions of the Institute of Chartered Accountants in Ireland under this *Handbook* are carried out by the Chartered Accountants Regulatory Board established in accordance with the provisions of Principal Bye-law 41 (ICAI)

	The term <i>Institutes</i> means all or any of them
Member	A member of an <i>Institute</i>
Panel	<ul style="list-style-type: none"> • A panel of the Review Committee of the Institute of Chartered Accountants in England and Wales • A panel consisting of both accountants and non-accountants appointed by the Institute of Chartered Accountants of Scotland • The review panel consisting of both accountants and non-accountants drawn from members of the Quality Assurance Review Committee appointed under the Public Practice Regulations issued under the Bye-laws of the Institute of Chartered Accountants in Ireland
Principal	A sole practitioner, a partner (including a salaried partner), member of a limited liability partnership or director in a <i>firm</i> . A director includes a shadow director under relevant company legislation
PII Regulations	<ul style="list-style-type: none"> • ICAEW's Professional Indemnity Insurance Regulations; • ICAS's Professional Indemnity Insurance Regulations; or • ICAI's Public Practice Regulations, Chapter 7, Professional Indemnity Insurance
Professional services	<p>Services provided by a <i>firm</i> that are subject to the rules of an <i>Institute</i> through the operation of the Charter, Rules Bye-laws, Regulations, ethical guidance, training requirements, disciplinary codes and other regulations as appropriate</p> <p>Where an insolvency practitioner is authorised by a body other than an Institute, the services provided in relation to their professional work as an insolvency practitioner, or services provided that may lead to an insolvency appointment or be connected to an insolvency appointment, are not professional services for the purposes of this Handbook as that work is not provided subject to the rules of an Institute through the operation of the Charter, Rules Bye-laws, Regulations, ethical guidance, training requirements, disciplinary codes and other regulations</p> <p>Professional services are services that do not constitute the carrying on of a regulated activity.</p>
RAO	Financial Services and Markets Act (Regulated Activities) Order 2001 no 544 as amended
Regulated Activities	An activity that falls within the specified activities set out in the <i>RAO</i>

PART 2 - ELIGIBILITY TO CONDUCT CREDIT-RELATED ACTIVITIES

Purpose

- 2.01 a. This *Handbook* applies to firms eligible under the *Handbook* to provide *exempt credit-related regulated activities* under Part XX of the *Act* carried on in the UK. The obligations of a firm set out in this *Handbook* are jointly and severally the obligations of the *principals* of that *firm*.
- b. All principals and staff within a *consumer credit firm* who undertake *exempt credit-related regulated activities* in the UK shall comply with this *Handbook*.

Eligibility

- 2.02 A *firm*, excluding any entity that is authorised by the *FCA*, is eligible to undertake *exempt credit-related regulated activities*, and when doing so is a *consumer credit firm* for the purposes of this *Handbook*, provided its principal business is the provision of *professional services* and it is either:
- a. a *firm*:
- registered under the *Institute's Audit Regulations*;
 - licensed under the *Institute's Designated Professional Body (Investment Business) Handbook*; or
 - authorised under the *ICAEW's Probate Regulations*; or
- b. a *member* engaged in public practice as a sole practitioner; or
- c. for *ICAEW*:
- a partnership engaged in public practice of which more than 50 per cent of the rights to vote on all, or substantially all, matters of substance at meetings of the partnership are held directly by *ICAEW members*;
 - a limited liability partnership engaged in public practice of which more than 50 per cent of the rights to vote on all, or substantially all, matters of substance at meetings of the partnership are held directly by *ICAEW members*; or
 - a body corporate, other than a limited liability partnership, engaged in public practice of which:
 - 50 per cent or more of the directors are *ICAEW members*;
 - more than 50 per cent of the nominal value of the voting shares is held directly by *ICAEW members*; and
 - more than 50 per cent of the aggregate in nominal value of the voting and non-voting shares is held directly by *ICAEW members*;or
- d. for *ICAS*:
- a partnership engaged in public practice of which 50 per cent or more of the rights to vote on all, or substantially all, matters of substance at meetings of the partnership are held directly by *ICAS members*;
 - a limited liability partnership engaged in public practice of which 50 per cent or more of the rights to vote on all, or substantially all, matters of

substance at meetings of the partnership are held directly by ICAS *members*; or

- a body corporate, other than a limited liability partnership, engaged in public practice of which 50 per cent or more of:
 - the directors are ICAS *members*;
 - the nominal value of the voting shares is held directly by ICAS *members*; and
 - the aggregate in nominal value of the voting and non-voting shares is held directly by ICAS *members*; or
- e. for ICAI:
- a partnership engaged in public practice of which 50 per cent or more of the rights to vote on all, or substantially all, matters of substance at meetings of the partnership are held directly by ICAI *members*;
 - a limited liability partnership engaged in public practice of which 50 per cent or more of the rights to vote on all, or substantially all, matters of substance at meetings of the partnership are held directly by ICAI *members*; or
 - a body corporate, other than a limited liability partnership, engaged in public practice of which 50 per cent or more of:
 - the directors are *members*;
 - the nominal value of the voting shares is held directly by ICAI *members*; and
 - the aggregate in nominal value of the voting and non-voting shares is held directly by ICAI *members*; or
- f. a partnership engaged in public practice of which more than 50 per cent of the rights to vote on all, or substantially all, matters of substance at meetings of the partnership are held directly by *members*; or
- g. a limited liability partnership engaged in public practice of which more than 50 per cent of the rights to vote on all, or substantially all, matters of substance at meetings of the partnership are held directly by *members*; or
- h. a body corporate, other than a limited liability partnership, engaged in public practice of which:
- 50 per cent or more of the directors are *members*;
 - more than 50 per cent of the nominal value of the voting shares is held directly by *members*; and
 - more than 50 per cent of the aggregate in nominal value of the voting and non-voting shares is held directly by *members*.

The eligibility requirements set out above are more limited than those set out in section 327(2) of the *Act*.

If a firm is authorised by the FCA it cannot take advantage of these Part XX arrangements.

Duties of the consumer credit firm

2.03 A consumer credit firm shall:

- a. at all times comply with this *Handbook* and be able to satisfy the *Institute* as to such compliance on request;
- b. deal with the *Institute*, acting through its committees, staff or its agents in an open and co-operative manner;
- c. inform the *Institute* in writing, within ten *business days* of the situation arising, if it is no longer eligible to conduct *exempt credit-related regulated activities* or cannot, or expects not to be able to, fulfil one or more of the obligations set out in this *Handbook*. The notification must state what has happened and the action that the *consumer credit firm* proposes to take;
- d. respond, when required, to enquiries made by the *Institute*, whether by writing, visiting the *firm's* offices, using a periodic return, or any other method, about the *firm*, its activities as a *consumer credit firm*, or any of its *consumer client* records;
- e. subject itself and all its *principals* to any monitoring, inspection or review process specified by the *Institute*;
- f. send any notice or other document to be served on the *Institute* in the manner set out in Part 1 of this *Handbook*, or as last notified to the *consumer credit firm*;
- g. comply with the *PII Regulations*; and
- h. act in accordance with the Code of Ethics issued by the *Institute*.

Obligations, duties and rights of the Institute

2.04 Any notice or other document to be served on the *firm* under this *Handbook* will be delivered by hand, sent by fax, posted or emailed:

- a. if delivered by hand, it must be handed to a representative of the *firm* and service will take effect immediately;
- b. if sent by fax, it must be sent to the latest fax number given by the *firm* to the *Institute* and service will take effect on sending;
- c. if sent by post, it must be sent to the latest address given by the *firm* to the *Institute* and service will take effect two *business days* after posting; or
- d. if sent by email, it must be sent to the latest email address notified by the *firm* and service will take effect immediately.

2.05 The *Institute* has a duty to:

- a. consider whether a *firm* is not able to become a *consumer credit firm*, or a *consumer credit firm* is no longer able to undertake *exempt credit-related regulated activities*;
- b. impose restrictions or conditions on a *consumer credit firm* as it considers appropriate;

- c. consider the information provided under regulation 2.03d and the remedial action planned by the *consumer credit firm*;
- d. grant to the *consumer credit firm* a dispensation, of no more than 90 days, from the requirement to comply with any part of this *Handbook* (excluding regulations 4.02c, 4.08b and 4.14 and any other regulations which implement or otherwise require compliance with any provision of EU law) where, in response to a written request, it considers it reasonable to do so having regard to the public interest and the interests of any *consumer client*;
- e. review the returns and reports made and submitted under the *Handbook*, and investigate failures to make or submit such returns or reports;
- f. make such enquiries as it considers appropriate about a *firm*, or a *firm's* records concerning its *consumer clients* (whether by requesting information in writing, visiting a *firm's* offices, using a periodic return, or any other method); and
- g. publish, in any manner it considers appropriate, information about a *consumer credit firm*.

2.06 At the request of a *firm* or a *consumer credit firm*, any decision by the *Institute* that a *firm* or a *consumer credit firm* is not able or no longer able to undertake *exempt credit-related regulated activities* or can only undertake such activities subject to conditions or restrictions shall be reviewed under Part 5 of the *Handbook*.

2.07 Subject to the approval of the *FCA*, the *Institute* may, in its discretion, make changes to this *Handbook* as and when it deems necessary and such variation shall have effect from the date notified by the *Institute*.

2.08 The *Institute* may delegate the performance of any of its responsibilities to committees, staff or other agents and may issue directions or guidance as it deems necessary.

2.09 If a *consumer credit firm* fails to comply with these *regulations* the *Institute* may take regulatory action or, depending on the circumstances, disciplinary action against the *consumer credit firm*.

2.10 The *Institute* may, in discharging any of its responsibilities, consider any information including disciplinary findings, orders, pending investigations, regulatory matters concerning a *firm* or a *consumer credit firm* or any of its *principals*, shareholders, or staff. Previous disciplinary findings, convictions, decisions, sentences or judgements, including criminal and civil court decisions, shall be conclusive proof for the purposes of this *Handbook*.

2.11 The *Institute* reserves the right to pass information about a *firm* or *consumer credit firm* to any *Institute* Committee, the *FCA*, HM Treasury, other Designated Professional Bodies, Recognised Supervisory Bodies, or Recognised Professional Bodies to enable any such body to discharge its functions, or if otherwise required to do so by law.

In deciding whether or not a consumer credit firm has complied with this Handbook, any guidance issued by or on behalf of the Institute from time to time may be taken into account but in the event of any conflict, the regulations in this Handbook (and any relevant legislation) will prevail.

Withdrawal of ability to conduct exempt credit-related regulated activities

- 2.12** The *Institute* may withdraw the ability of a *firm* to conduct *exempt credit-related regulated activities* if a *firm* fails to satisfy the *Institute* that it has complied or will continue to comply with its obligations under this *Handbook* within thirty days of the *Institute* serving on it a written notice demanding such satisfaction.
- 2.13** The *Institute* will have the right to withdraw the ability of a *consumer credit firm* to conduct *exempt credit-related regulated activities* without notice if the *FCA* makes a direction under section 328 of the *Act* that is applicable to the *firm* or an order against it under section 329 of the *Act* that the exemption from the general prohibition shall not apply.

Consequences of withdrawal of ability to conduct exempt credit-related regulated activities

- 2.14** On withdrawal of the ability to conduct *exempt credit-related regulated activities* under Part XX of the *Act*, the *firm* has continuing obligations to deal with enquiries or complaints in relation to any act or omission during the period when it was conducting such activities.
- 2.15** if a *firm* is no longer subject to this *Handbook*, disciplinary action may still be taken against it by the *Institute* for any past failure to comply with this *Handbook* or for any failure to comply with a provision of the *Handbook* that has a continuing effect.

PART 3 - REGULATED ACTIVITIES - CONSUMER CREDIT REQUIREMENTS

This Part of the Handbook governs the scope of the exempt credit-related regulated activities which may be carried out by consumer credit firms.

This Part embodies the requirements of the Act that:

- provision of services in the course of carrying out exempt credit-related regulated activities must be incidental to the provision of professional services; and
- the exempt credit-related regulated activities must arise out of or be complementary to the provision of a professional service to the consumer client in question.

A consumer credit firm that carries on a credit-related regulated activity in breach of these regulations which contain all the requirements of section 327 of the Act may be in breach of the general prohibition under the Act and committing a criminal offence. In addition, a breach of these regulations amounts to a matter that leaves a member or firm open to regulatory and/or disciplinary action by the Institute.

3.01 No *member* may undertake, agree to undertake, hold themselves out as carrying on *exempt credit-related regulated activities*, or permit others to do so, unless they are a *principal* in, or employed by, a *consumer credit firm* or other firm that is permitted to do so by another *DPB* or the *FCA*.

3.02 No *firm* may be eligible to undertake or agree to undertake *exempt credit-related regulated activities* if there is a direction under section 328 of the *Act* applicable to the *firm* or an order against it under section 329 of the *Act* that the exemption from the general prohibition does not apply to the *firm*.

3.03 Subject to regulations 3.04 and 3.05, in the course of providing *professional services*, a *consumer credit firm* may carry out any *exempt credit-related regulated activity* that is permitted by Table A of Schedule 1 and not prohibited by any Order made by HM Treasury under Section 327(6) of the *Act*.

The activity of entering into a regulated credit agreement as lender is restricted by regulation 4.12. Providing debt management plans is prohibited by regulation 4.15. The Institutes reserve the right to amend Schedule 1 to narrow the range of activities permitted to consumer credit firms or, particularly to deal with any orders made by HM Treasury under Section 327(6) of the Act.

3.04 The *exempt credit-related regulated activities* must be provided in a manner which is incidental to the provision of other *professional services*.

Schedule 2 contains guidance on how, in the Institutes' view to determine whether the activities are carried on in an incidental manner, but firms are reminded that the interpretation of the Act's provisions as to incidentality is a matter for the Court.

3.05 A consumer credit firm may not provide any exempt credit-related regulated activity to a consumer client unless the exempt credit-related regulated activity provided to that consumer client arises out of, or is complementary to, one or more professional services which are provided to that consumer client and which are not regulated activities.

The exemption for firms to carry out exempt credit-related regulated activities is only available if those activities arise out of or, are complementary to, one or more professional services which are not themselves regulated activities. When any set of services, such as auditing, accounting or taxation, are provided to a consumer client the services will not necessarily be provided in a particular order - the exempt credit-related regulated activity can be provided to the consumer client as the first service.

PART 4 - CONDUCT OF BUSINESS

This Part applies to all consumer credit firms in their provision to consumer clients of exempt credit-related regulated activities. Consumer credit firms must have regard to the associated guidance in Schedule 4.

Where this Part requires information to be provided in writing, the information must be provided in a durable medium (in a form, either paper or electronically which cannot be changed) and in the language of the EU Member State of the consumer client, or any other language agreed by the consumer credit firm and the consumer client.

Engagement with consumer clients

- 4.01** A *consumer credit firm* shall ensure that it is in full agreement with its *consumer clients* as to the nature, scope and terms of the *exempt credit-related regulated activities* which are or may be provided and that it retains written evidence of this agreement.
- a. The *consumer client* must not be put under pressure by the *consumer credit firm* to accept terms of engagement that may not be in accordance with his or her wishes.
 - b. A *consumer credit firm* must not include the following terms in any agreement with the *consumer client*:
 - confirming the *consumer client's* understanding;
 - restricting or prohibiting the *consumer client* from corresponding with a creditor or other relevant third party; and
 - stating or implying that the *consumer credit firm* has no liability to the *consumer client*.
 - c. If the engagement is for a fixed period, or time limited, this must be made clear to the *consumer client*.
 - d. Where a *consumer credit firm* charges different rates for its *professional services* or any *exempt credit-related regulated activities*, this must be made clear to the *consumer client*.
 - e. In relation to the *exempt credit-related regulated activities* being offered, the *consumer credit firm* must disclose any relationship with a third party including any extra costs for those activities.
 - f. A *consumer credit firm* shall ensure from time to time, as appropriate, that the *consumer client* is aware of and understands the terms of the engagement, particularly if the *consumer client* only carries out occasional transactions with the *consumer credit firm*.
 - g. If the parties agree changes to the terms of the engagement, a *consumer credit firm* shall retain written evidence of those changes. In circumstances where an engagement letter has been issued these new terms should be set out in a varied engagement letter or a new engagement letter. Terms of engagement shall be regularly reviewed.

It is for the consumer credit firm to decide how it evidences, in writing, the agreement with the consumer client as long as it is in a manner appropriate to the terms of the engagement and the needs of the particular client (and in compliance with any relevant regulatory requirements). Whilst there is no requirement to issue an engagement letter, there are benefits in doing so, not least that it sets out clearly the nature and terms of the services being provided.

If an engagement letter is used, it is agreed if:

- the consumer client signs it. This is the clearest way of making sure that the consumer client confirms the terms on which the consumer credit firm will act; or
- the consumer client receives it before the consumer credit firm starts to act, and does not object to the terms.

Schedule 4 includes the following:

- suggested paragraphs for an engagement letter on terms of engagement and complaint resolution;
- a suggested paragraph for engagement letters to permit consumer credit firms to make an exempt financial promotion to consumer clients; and
- material on what a consumer credit firm may state about its exempt credit-related regulated activities in any brochure that describes its activities.

Status disclosure

4.02 A consumer credit firm shall ensure that *consumer clients* are aware of its status under the *Act*. This shall be communicated to the *consumer client* in writing and contain the following details, which must be clear, fair and not misleading and with appropriate prominence:

- a. the name and address of the *consumer credit firm*;**
- b. a statement that the *consumer credit firm* is not authorised by the *FCA*;**
- c. guidance as to the nature of the *exempt credit-related regulated activities* carried out by the *consumer credit firm* and the fact that they are limited in scope including a statement as to whether the *consumer credit firm* works exclusively with one or more lenders or independently and the name of the lender (if known); and**
- d. a statement that the *consumer credit firm* is regulated for these activities by the *Institute*.**

These disclosures can be made within the terms of engagement or in other material supplied to the consumer client. Schedule 4 of this Handbook includes suggested paragraphs for an engagement letter.

There is no requirement for a consumer credit firm to have a legend on its letterhead, but Schedule 4 of this Handbook includes a specimen legend for use by a consumer credit firm if it wishes.

Competence

4.03 a. A consumer credit firm shall carry out work covered by the *Handbook* with a clear understanding of the legislative framework and must not undertake or continue such work which it is not competent to perform unless it obtains such advice and assistance as will enable it to comply with this *Handbook*.

- b. **A consumer credit firm shall apply a level of professional scepticism to the information provided by a consumer client, and take reasonable steps where appropriate to verify the consumer client's identity, income, outgoings and any surplus income.**

A consumer credit firm should refer the consumer client to, or provide contact details for, a debt advice provider in circumstances where the consumer credit firm is unable to provide appropriate advice or provide an appropriate solution for the consumer client.

A consumer credit firm should also refer the consumer client to an appropriate not-for-profit debt advice body in circumstances where the consumer client has problems related to debt requiring immediate attention with which the consumer credit firm is unable to assist; or where the consumer client is unable to pay the consumer credit firm's fees.

Record keeping

4.04 A consumer credit firm shall ensure that it has appropriate records of work undertaken on behalf of consumer clients.

Records should evidence the work undertaken on behalf of consumer clients under these requirements, plus any specific instructions from the consumer client. The papers should document matters that are important in arriving at the conclusion or output of a particular assignment, and record the reasoning on all significant matters that require the exercise of judgement. This will assist in demonstrating that the consumer credit firm has only provided exempt credit-related regulated activities to a consumer client that are incidental to and arise out of or are complementary to other professional services provided to that consumer client.

The records do not have to be on paper but could instead be held electronically. Whatever method of storage is used, the consumer credit firm must keep a mechanism for gaining access to those records.

It is likely that the Institute will only be satisfied if the consumer credit firm keeps records relating to work performed under these requirements for at least 6 years. Consumer credit firms should bear in mind that some legislation requires records to be retained for longer.

Complaints resolution

4.05 A consumer credit firm shall ensure that all consumer clients are notified in writing of the name of a senior person within the consumer credit firm to be contacted in the event of a complaint and of their right to complain to the Institute.

4.06 If a consumer credit firm receives a complaint from a consumer client or a former consumer client concerning services covered by this Handbook it must immediately instigate an investigation by a principal.

4.07 If following such an investigation the consumer credit firm is of the opinion that the complaint is justified in whole or in part it must do whatever is appropriate to resolve the complaint, whether by way of remedial work, apology, providing information, returning books or documents, reduction or repayment of fees, or otherwise.

A complaint may be a prelude to a claim that will need to be referred to professional indemnity insurers. It is essential that an assessment is made of any complaint when it is received. In the event that a complaint is considered to be a potential claim the consumer credit firm's insurers/brokers should be notified at once.

A complaint may arise from different sources, such as consumer organisations and others acting on behalf of a consumer client. Consumer credit firms should ensure that their procedures can be properly applied, regardless of the source of the complaint.

Where a complaint has to be referred to insurers it will be essential, if cover is not to be affected, to act in accordance with advice offered by the insurers.

Consumer credit firms should consider the use of alternative dispute resolution methods and discuss any proposals to settle complaints or claims with their professional indemnity insurers.

Where complaints which have not been assessed as potential insurance claims are concerned any concession made should be accompanied by a phrase such as "As a gesture of goodwill and without admission of liability we are prepared....".

Details of the complaint resolution procedure can be included within the terms of engagement or in any other material supplied to the consumer client (see regulation 4.01).

Further guidance can be found:

- for ICAEW in the "The duty on firms to investigate complaints - guidance on how to handle or avoid them" at icaew.com/regulations;
- for ICAS at icas.com/regulation/complaints-information-for-icas-members/;
- for ICAI in the "Guide to Complaints Procedures" at carb.ie/en/complaints.

Accounting for commission/fees

- 4.08 a. If a *consumer credit firm* receives commission, or other pecuniary reward, because of acting for or giving advice to a *consumer client*, in the course of *exempt credit-related regulated activities* the *consumer credit firm* must account for the commission, or other pecuniary reward, to the *consumer client* in writing.**
- b. The *consumer credit firm* must not charge a fee for the provision of credit broking services**

Accounting to the consumer client means remitting the commission to the consumer client or dealing with it on the consumer client's instructions having informed the consumer client that he or she has the right to require the consumer credit firm to remit the commission to him or her. If a consumer client has indicated that the consumer credit firm may retain the commission or other benefit, the consumer credit firm must obtain the express written consent of the consumer client. In securing the consent of the consumer client, the consumer client must also be clear as to the amount and frequency of the commission or benefit. Blanket disclosure within the terms of engagement is not sufficient to secure the informed consent of the consumer client. Until the consumer client's instructions are received, any commission should be dealt with in accordance with the Institute's clients' money requirements.

There are significant regulatory requirements in the FCA's Consumer Credit Sourcebook in relation to credit broking and charging fees for that service and such activities have therefore been scoped out of the Part XX regime.

Best interests of the client

4.09 When dealing with a creditor or a permitted third party on behalf of a *consumer client*, a *consumer credit firm* must deal with the creditor or permitted third party in a transparent manner so that the *consumer client's* interests are not adversely affected.

A permitted third party is:

- a person authorised by the FCA to carry out regulated activities under the Act; or
- an appointed representative acting in the course of a business for which he is exempt.

When dealing with a creditor or permitted third party a consumer credit firm should satisfy itself that:

- i. the permitted third party is appropriately authorised by the FCA or exempt;
- ii. it supplies the creditor or permitted third party with information about the consumer client that it reasonably requests in order to advise the consumer client;
- iii. any information supplied is complete and accurate;
- iv. the consumer client has consented to the provision of the information and/or the referral;
- v. any risk warnings and other information are passed to the consumer client as soon as is practicable; and
- vi. the consumer client is aware of the respective responsibilities of the consumer credit firm and the creditor or the permitted third party.

Where a consumer credit firm prepares a financial statement on behalf of a consumer client to be sent to a creditor or a permitted third party, the consumer credit firm should ensure that the financial statement:

- i. is accurate, clear and realistic and that the consumer client has confirmed the accuracy of the financial statement;
- ii. states any fees or charges being made by the consumer credit firm in relation to the exempt credit-related regulated activity.

4.10 a. A *consumer credit firm* shall carry out its engagements under this Part in what it reasonably regards as the best interests of the *consumer client*.

b. A *consumer credit firm* shall comply with the content of Schedule 5 to this *Handbook* to the extent applicable. Schedule 5 provides details of matters which, if relevant, shall be brought to the *consumer client's* attention when providing debt counselling services.

Acting in the best interests of a consumer client includes:

- i. considering whether the consumer client:
 - is vulnerable and dealing with any vulnerability appropriately;
 - has the mental capacity to understand, remember and consider relevant information to make a decision about an exempt credit-related regulated activity;
 - has understood the explanations given;

- ii. considering whether the particular course of action is suitable for the consumer client's needs and financial circumstances, and the motivation of the consumer client, including having regard, where appropriate, to the consumer client's financial position and ability to repay;
- iii. providing sufficient information and explanations about the suitable options available to the consumer client, and how they operate, including the possible consequences and risks and the reasons why the consumer credit firm considers a particular option most suitable for the consumer client;
- iv. not misleading consumer clients about the legal effect of an agreement nor unfairly encouraging, incentivising or inducing, or pressurising a consumer client to enter into an agreement or make changes to the agreement, or failing to give the consumer client time to consider the agreement;
- v. ensuring that any personal data is only used in an appropriate manner, and in accordance with data protection legislation, and with appropriate transparency to the consumer client;
- vi. when consulting a credit reference agency, the consumer credit firm should provide the name and address of the credit reference agency to the consumer client on request;
- vii. keeping under review the operation and effectiveness of the approach adopted and;
- viii. keeping the consumer client informed about any changes.

A consumer credit firm should document its considerations of the above in a letter to the consumer client or in a file note, in a durable medium (in a form, either paper or electronically, which cannot be changed) that should be shared with the consumer client. Where the consumer credit firm has prepared a financial statement on behalf of the consumer client, the consumer client should also be provided with a copy of this financial statement.

4.11 In its dealings with a *consumer client*, the *consumer credit firm* must act in a manner that is clear, fair and not misleading. This includes:

- a. **not carrying on *exempt credit-related regulated activities* that are under a name which is likely to mislead *consumer clients* about the status of the *firm* or the nature of its business or in any other way;**
- b. **ensuring that all communications are balanced, comprehensive and easily understood;**
- c. **not taking advantage of a *consumer client's* lack of knowledge;**
- d. **not incurring excessive and/or unreasonable costs to the *consumer client*; and**
- e. **having regard to the *consumer client's* wishes regarding the duration, timing and location of any meeting.**

Excessive costs include the cost of Premium Rate calls.

Entering into a regulated credit agreement as lender or exercising, or having the right to exercise, the lender's rights and duties under a regulated credit agreement

4.12 A consumer credit firm must not enter into any transaction with a consumer client in which it:

- a. provides the consumer client with credit card cheques, credit tokens, a credit or store card, high-cost short-term credit, a current account or running account credit;**
- b. seeks to take security for the transaction on the consumer client's home or land owned by the consumer client; or**
- c. holds a continuous payment authority over the consumer client's account; or**
- d. takes any article from the consumer client in pledge or pawn as security for the transaction; or**
- e. refinances a consumer client's existing credit with the consumer credit firm (other than by exercising forbearance); or**
- f. allows for an increase in any interest rate charged.**

Terms used in the above regulation are explained below:

- credit card cheques – a cheque that will result in the provision of a credit token to the consumer client.
- credit tokens - a card, cheque, voucher, coupon, stamp, form, booklet or other document or thing given to an individual which, when presented to a third person, will allow that individual to receive cash, goods or services from that third party.
- high-cost short-term credit – a credit agreement with an annual percentage rate of charge of 100% or more.
- continuous payment authority – authority given by an individual to allow a third party to withdraw monies from the individual's account without further consent. It does not include:
 - standing orders;
 - direct debits to which the direct debit guarantee applies;
 - if consent is given to a single request for a specified amount to be paid on a specified day.

This would not prevent a consumer credit firm operating a payroll service for a consumer client.

- running account credit – an arrangement to allow a person to receive from the lender or a third party cash, goods or services to an amount such that, taking into account payments made by or to the credit of the person the credit limit (if any) is not at any time exceeded.

When considering entering into a transaction as a lender, the consumer credit firm should have regard to the guidance contained in the Code of Ethics regarding the making of loans to clients.

The prohibition on entering into a current account agreement with a consumer client does not prevent a firm holding client's monies in accordance with the Institute's clients' money requirements.

- 4.13 A consumer credit firm must not exercise, or have the right to exercise, the lender's rights and duties under a regulated credit agreement which it did not enter into as lender.**
- 4.14 Except where already prohibited by regulation 4.12, where a consumer credit firm enters into a regulated credit agreement as lender it must:**
- a. comply with all relevant parts of the FCA's Consumer Credit Sourcebook; and**
 - b. comply with regulations 3.04 and 3.05 when providing the service.**

In particular chapters 4, 5, 6 and 7 of the FCA's Consumer Credit Sourcebook apply to lending scenarios. In addition certain provisions within chapters 2, 3, 11 and 13 may also be applicable to lenders. The Institutes have not drafted regulations applicable to transactions where the consumer credit firm is acting as lender as it is unlikely that consumer credit firms will enter into this type of transaction having regard to the Code of Ethics and the prohibition in regulation 4.12.

Instalment credit agreements entered into on or since 18 March 2015 where there are 12 payments or less in a 12 month period, with no interest or charges (except for default charges), are exempt and are not regulated credit agreements. Instalment credit agreements entered into before 18 March 2015 are only exempt credit agreements where there are 4 payments or less in a 12 month period, with no interest or charges (except for default charges). In relation to instalment credit agreements which do not fall within any exemption, the consumer credit firm shall comply with the FCA's Consumer Credit Sourcebook.

Debt management plans

- 4.15 A consumer credit firm must not provide a debt management plan to a consumer client. For the purposes of this regulation, a debt management plan is a non-statutory agreement between a consumer client and one or more of the consumer client's creditors the aim of which is to discharge or liquidate the consumer client's debts, by making any payments to a third party (in this case the consumer credit firm) which administers the plan and distributes the money to creditors.**

This regulation prohibits a consumer credit firm from providing debt management plans to its consumer clients. In the course of providing the exempt credit-related regulated activities of debt counselling and debt adjusting the consumer credit firm may assist a consumer client in the following ways:

- i. drawing up a budget to establish the amount a consumer client would have available to make repayments to creditors;
- ii. providing a template letter to be sent to creditors by the consumer client offering a repayment plan;
- iii. contacting a creditor on behalf of a consumer client, where the creditor has failed to engage with the consumer client.

The activities listed above do not constitute providing a debt management plan.

Providing credit information services

- 4.16 When providing credit information services a consumer credit firm must not:**

- a. **claim to be able to remove negative but accurate information from a *consumer client's* credit file;**
- b. **mislead a consumer client about the length of time that negative information is held on consumer client's credit file; or**
- c. **suggest that a new credit file can be created.**

E-commerce

4.17 If a *consumer credit firm* undertakes an information society service (as defined by article 2(a) of the E-Commerce Directive (2000/31/EC) and article 1(2) of the Technical Standards and Regulations Directive (98/34/EC)) from an establishment in the UK with or for a person in the UK or another EEA State then it must comply with the Electronic Commerce (EC Directive) Regulations (2002/2013).

In summary, an information society service is any service provided by means of electronic equipment that processes and stores data.

PART 5 - REVIEW AND APPEAL PROCESS

At the request of a consumer credit firm or a firm, any decision that the firm is not eligible or no longer eligible to undertake exempt credit-related regulated activities or can only undertake such activities subject to conditions or restrictions shall be reviewed by the Institute using the following process.

Review

- 5.01** A *consumer credit firm or firm* may apply to the *Institute* in writing for a review of a decision to:
- a. impose restrictions or conditions on how a *consumer credit firm* may conduct *exempt credit-related regulated activities*; or
 - b. withdrawing a *consumer credit firm's* ability to or prohibiting a *firm* from conducting *exempt credit-related regulated activities*;
 - c. within ten *business days* of the service of notice of the *Institute's* decision.
- 5.02** As soon as possible after the *consumer credit firm or firm* applies for a review a *Panel* must meet and consider the matter. The *Panel* can consider any new material put forward by the *consumer credit firm or firm* and may make any order the *Institute* could have made under this *Handbook*. The *Panel* may, in addition, order a *consumer credit firm or firm* to contribute to the costs of the review.

Appeal

- 5.03** A *consumer credit firm or firm* may appeal against a decision of the *Panel* on the grounds that it:
- a. was wrong in law, specifically that it incorrectly interpreted the Act or any other relevant statute;
 - b. wrongly interpreted any relevant Part of this *Handbook* or *Bye-law*;
 - c. did not comply with its procedures;
 - d. made a decision which no tribunal, correctly applying the law to the facts before it and acting reasonably, would have made;
 - e. had not considered available evidence which could reasonably have led the *Panel* to make a different decision; or
 - f. had exceeded its powers or failed to exercise them properly.
- 5.04** A *consumer credit firm or firm* wishing to appeal shall give notice in writing to the *Institute* within ten days of service of the *Panel's* decision, giving details of its grounds for appeal. On receiving this notice of appeal, the matter will be referred to the *Appeal Committee*.
- 5.05** On receipt of an appeal under regulation 5.04, the *Appeal Committee* will, as soon as practicable, consider the evidence that was before the *Panel* and may in its discretion receive fresh evidence under regulation 5.03(e).

5.06 On any appeal the *Appeal Committee* may:

- a. confirm, alter or overturn any decision of the *Panel*, either in whole or in part;**
- b. order that the *Institute* reconsider the matter;**
- c. dismiss the appeal; or**
- d. make any other decision it considers appropriate.**

5.07 The *Appeal Committee* may also order a *consumer credit firm* or *firm* to contribute to the costs of the appeal.

Costs are likely to be awarded if, for example, the firm fails to attend when it said it would, does not send in further material it has promised, or the application for appeal has no merit and/or is frivolous or vexatious.

PART 6 - REGULATORY PENALTIES

- 6.01** The *Institute* may propose a regulatory penalty to a *consumer credit firm* or *firm* subject to the following:
- a. the *consumer credit firm* or *firm* must have agreed that the breach of this *Handbook* has been committed;
 - b. the *Institute* will decide the amount of the penalty and when it is to be paid. The *Institute* will set this out in the letter to the *consumer credit firm* or *firm* proposing the penalty; and
 - c. if the *consumer credit firm* or *firm* wishes to accept the terms on which the penalty is proposed, it must notify the *Institute* within ten *business days* of the date of service of the letter from the *Institute* containing the proposal.
- 6.02** There are no rights of review or appeal under Part 5 against a regulatory penalty.
- 6.03** The *Institute* will take account of any comments a *consumer credit firm* or *firm* makes about the terms of the regulatory penalty. It may then reduce the amount of the penalty.
- 6.04** If the *consumer credit firm* or *firm* accepts the penalty under regulation 6.01c, the *Institute*, as soon as is practical:
- a. will make an order; and
 - b. may publish the order in any way it decides.
- 6.05** Details of any penalty accepted, and the order made, will be kept by the *Institute* and it may, if it wishes, use that information in the future.
- 6.06** If a *consumer credit firm* or *firm* does not agree that the breach has been committed, or does not agree to the terms of the penalty proposed or fails to comply with the terms of the penalty, the matter may be dealt with under the disciplinary arrangements in Part 7.

PART 7 - DISCIPLINARY ARRANGEMENTS

Application of ICAEW disciplinary arrangements

7.01 In this part:

- **Disciplinary Bye-laws** means the Disciplinary Bye-laws of ICAEW;
- **Disciplinary Committee** means a committee, panel or tribunal appointed under the Disciplinary Bye-laws with responsibility to hear a formal complaint and for disciplining *members*, firms and others in accordance with those Bye-laws.
- **Investigation Committee** means the committee appointed under the Disciplinary Bye-laws with responsibility for considering complaints against *members*, firms and others as specified in those Bye-laws.

7.02 Save as provided below, the Disciplinary Bye-laws apply to breaches of these regulations as if references in those Bye-laws to a firm or member firm are construed as references to a *consumer credit firm*.

7.03 In addition to the powers of a tribunal set out in the Disciplinary Bye-laws, if the Disciplinary Committee considers that a complaint brought by the Investigation Committee under this chapter is proved, it will make a finding to that effect and may also make any of the following orders:

- a. that the *consumer credit firm* be reprimanded or severely reprimanded;
- b. that the *consumer credit firm* be fined; or
- c. that its status as a *consumer credit firm* be withdrawn.

Application of ICAS disciplinary arrangements

7.04 In this part:

- **Disciplinary Regulations** means the Rules, Investigation Regulations and Discipline and Appeal Tribunals Regulations of ICAS.
- **Disciplinary Committee** means board, committee, panel or tribunal appointed under the Disciplinary Regulations with responsibility for disciplining members, firms and others in accordance with those Regulations.

7.05 Save as provided below, the Disciplinary Regulations apply to breaches of these regulations as if references in those Regulations to a firm or member firm are construed as references to a *consumer credit firm*.

7.06 If the Disciplinary Committee considers that a complaint under this chapter is proved, it will make a finding to that effect and impose such sanction as may be permitted under the Disciplinary Regulations.

7.07 For the avoidance of doubt, in addition to the powers set out in the Disciplinary Regulations, the Disciplinary Committee may make an order that status as a *consumer credit firm* be withdrawn.

Application of ICAI disciplinary arrangements

7.08 In this part:

- **Disciplinary Bye-laws** means the Disciplinary Bye-Laws of ICAI.
- **Disciplinary Committee** means a person, body, board, committee, panel or tribunal appointed under the Disciplinary Bye-laws with responsibility for disciplining members, firms and others in accordance with those Bye-laws.

7.09 Save as provided below, the Disciplinary Bye-laws apply to breaches of these regulations as if references in those Bye-laws to a firm or member firm are construed as references to a *consumer credit firm* or *firm*.

7.10 If the Disciplinary Committee considers that a complaint under this chapter is proved, it will make a finding to that effect.

7.11 In addition to the powers set out in the Disciplinary Bye-laws, the Disciplinary Committee may make an order that status as a *consumer credit firm* be withdrawn.

SCHEDULE 1 - LIST OF CREDIT-RELATED REGULATED ACTIVITIES

This Schedule sets out all the credit-related regulated activities from the *RAO*. Table A lists those that can be undertaken (to the extent set out in Part 3) by a *consumer credit firm*, provided they are undertaken in accordance with Part 3 of this *Handbook*. Table B sets out the remaining credit-related regulated activities that a *consumer credit firm* cannot undertake.

Table A

The following are only credit-related regulated activities when they are carried on by way of business (see Schedule 2 and Schedule 3) and, depending on the relevant regulated activity, may relate to regulated or certain exempt credit agreements or regulated or certain exempt consumer hire agreements or, in the case of the activities in article 89A, relate to information about a person's financial standing.

RAO activity	RAO ref	Description of activity
1. Credit broking	Article 36A	<p>Credit broking includes introducing a consumer client to a third party with a view to entry into a credit agreement or a consumer hire agreement, or presenting or offering a credit agreement or undertaking other preparatory work with a view to a credit agreement. The third party can be either a lender or another credit broker, and credit broking is not limited to regulated agreements</p> <p>A consumer credit firm may only engage in credit broking where it does not charge a fee (see regulation 4.08(b))</p>
2. Debt adjusting	Article 39D(1) and (2)	<p>On behalf of a consumer client, in respect of either a credit agreement or a consumer hire agreement:</p> <ul style="list-style-type: none"> • negotiating terms for the discharge of a debt, • taking over, in return for payments by the consumer client, that client's obligation to discharge a debt, or • any similar activity concerned with the liquidation of a debt <p>Providing debt management plans is prohibited by regulation 4.15</p>
3. Debt counselling	Article 39E(1) and (2)	<p>Giving advice to a consumer client about the liquidation of a debt due under a credit agreement or a consumer hire agreement</p> <p>Providing debt management plans is prohibited by regulation 4.15</p>
4. Debt administration	Article 39G(1) and (2)	<p>Acting on behalf of a creditor or owner (as appropriate) in respect of a credit agreement or a consumer hire agreement to:</p> <ul style="list-style-type: none"> • perform duties under the agreement; or • exercise or enforce rights under the agreement

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| 5. Entering into a regulated credit agreement as lender | Article 60B(1) | <p>Entering into a credit agreement as lender includes entering into an agreement where a cash loan or any other form of financial accommodation is provided, such as where a consumer credit firm allows a consumer client to pay its fees by instalments. There are exemptions, including where:</p> <ul style="list-style-type: none"> • an agreement is entered into on or since 18 March 2015 and there are 12 payments or less in a 12 month period, with no interest or charges (except for default charges); or • an agreement was entered into before 18 March 2015 and there are 4 payments or less in a 12 month period, with no interest or charges (except for default charges) |
|---|----------------|--|

Note: regulation 4.12 limits the transactions that a consumer credit firm can enter into as lender

Instalment credit: in relation to instalment credit agreements which do not fall within any exemption, the consumer credit firm shall comply with the FCA's Consumer Credit Sourcebook

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| 6. Exercising, or having the right to exercise, the lenders rights and duties under a regulated credit agreement | Article 60B(2) | <p>This activity allows the lender or another person to exercise, or to have the right to exercise, the lender's rights and duties under a regulated credit agreement</p> <p>A consumer credit firm may only exercise, or have the right to exercise, the lender's rights and duties under a regulated credit agreement where it entered into the agreement as lender (see regulation 4.13)</p> |
| 7. Agreeing to carry on a regulated activity so far as relevant to any of the activities listed here | Article 64 | <p>This allows a consumer credit firm to agree to carry on any of the activities listed in this table</p> |
| 8. Providing credit information services | Article 89A | <p>On behalf of a consumer client, or advising a consumer client about:</p> <p>ascertaining whether a credit information agency holds information about the financial standing of the consumer client;</p> <ul style="list-style-type: none"> • ascertaining the contents of such information; • securing the correction of, the omission of anything from, or the making of any other kind of modification of such information; or • securing that a credit information agency which holds such information: <ul style="list-style-type: none"> • stops holding the information, or • does not provide it to any other person |

Table B

The following are other credit-related regulated activities from the *RAO* that cannot be undertaken by a *consumer credit firm*. They can only be undertaken by a *FCA* authorised firm with the relevant permissions.

RAO activity	RAO ref	Description of activity
1. Operating an electronic system in relation to lending	Article 36H	This allows the operation of an electronic system to enable persons to become lenders and borrowers – this is known as ‘peer to peer’ lending’.
2. Debt collecting	Article 39F(1) and (2)	Taking steps to procure the payment of a debt due under a credit agreement or a consumer hire agreement.
3. Entering into a regulated consumer hire agreement as owner	Article 60N(1)	Entering into a regulated consumer hire agreement as owner includes hiring, renting, or leasing goods where the arrangement is not a hire purchase agreement and is capable of lasting for more than three months.
4. Exercising, or having the right to exercise, the owner’s rights and duties under a regulated consumer hire agreement	Article 60N(2)	This activity allows the owner or another person to exercise, or to have the right to exercise, the owner’s rights and duties under a regulated consumer hire agreement.
5. Providing credit references	Article 89B	Collecting information about the financial standing of individuals and providing it to others.

SCHEDULE 2 - GUIDANCE ON THE MEANING OF “IN AN INCIDENTAL MANNER”

Part 3 of the Handbook refers to the provision of exempt credit-related regulated activities “in an incidental manner”. This is the Institutes’ own guidance to members and has not been approved by the FCA.

1. The concept of incidentality is required by Part XX of the Act.
2. The focus is on how the exempt credit-related regulated activity relates to the professional service from the standpoint of the firm. It is the sum of the individual transactions comprising the service which falls to be assessed, in relation to the professional activity of the firm.
3. In order for a firm to satisfy the Institute as to its provision of exempt credit-related regulated activities in an incidental manner it should be able to show that:
 - i. it is mainly concerned with providing professional services other than regulated activities; and
 - ii. the provision of the regulated activities is not isolated from the firm's other activities such that there is in effect a separate business (this would however not exclude a consumer credit firm from operating specialist departments within it).
4. The test in 3(b) is not quantitative but relates to the manner in which the services are presented. This can be assessed by reference to questions such as:
 - i. Does the consumer credit firm fully accept that in providing an exempt credit-related regulated activity it is within the scope of the general ethical code or rules governing the profession?
 - ii. Is the exempt credit-related regulated activity provided in conjunction with the professional activities of the consumer credit firm?
 - iii. Is it the policy of the consumer credit firm to endeavour to provide a full range of services to its consumer clients, where these services are appropriate?
 - iv. In terms of the way the exempt credit-related regulated activities are managed by the consumer credit firm, is it clear that the activity is not on a stand-alone basis, separate from the main activities of the consumer credit firm?
 - v. Is the provision of exempt credit-related regulated activities managed on a day-to-day basis by people who are members (or affiliated and subject to the rules) of a Designated Professional Body?
 - vi. Are the offices dealing with the exempt credit-related regulated activity in the same locations as the offices from which the main professional services are provided?
5. Each of the questions listed may carry more or less weight depending on the facts of the particular case.

SCHEDULE 3 - GUIDANCE ON THE BY WAY OF BUSINESS TEST

This is the Institutes' own guidance to members and has not been approved by the FCA.

In addition to considering whether the firm is conducting an exempt credit-related regulated activity, the firm should also consider whether the activities are being conducted "by way of business". This test is laid down under the Financial Services and Markets Act (Carrying on Regulated Activities by Way of Business) Order 2001 no 1177 (as amended) and provides that an activity is only a credit-related regulated activity if it is conducted "by way of business".

Remuneration is not necessarily the deciding or only factor. Even if no remuneration is received, it is possible that the firm is conducting the activity by way of business. However, if the activity is a "one-off" it may be conducted in a manner which is not "by way of business".

Factors which should be included in the firm's consideration and which may indicate that the activity is conducted "by way of business", and therefore regulated, are whether:

- remuneration is received;
- the activity is conducted frequently for that consumer client;
- the activity is a one-off situation for that consumer client but conducted frequently by the firm;
- the firm carries on other similar exempt credit-related regulated activities;
- any remuneration received is significant in quantum for the firm, even if the advice is an isolated incident for both the consumer client and the firm; or
- the firm advertises that it can conduct that type of activity.

Firms should also consider whether similar activities will arise in future and if so, whether the firm may undertake further work. A general willingness to involve itself in an exempt credit-related regulated activity may mean that the occurrence is the first in an activity which may become frequent. In such circumstances, the firm should regard itself as conducting the activity "by way of business".

SCHEDULE 4 - SUGGESTED PARAGRAPHS FOR AN ENGAGEMENT LETTER AND SPECIMEN LETTERHEAD LEGEND

Some regulations in Part 4 of the Handbook require specific disclosures to be made to the consumer client. This is the Institutes' own guidance to members and has not been approved by the FCA.

This Schedule provides suitable paragraphs and a specimen letterhead legend.

Suggested paragraphs for engagement letters

- 4.02 We are regulated by the [Institute of Chartered Accountants in England and Wales/Institute of Chartered Accountants of Scotland/Institute of Chartered Accountants in Ireland] to provide certain credit-related services where these are complementary to or arise out of the professional services we are providing to you. Such services may include [where known, specify the nature of any activities]. If, during the provision of professional services to you, you need advice beyond what we are permitted to do, we may have to refer you to someone who is authorised by the Financial Conduct Authority, as we are not
- 4.05 If you would like to talk to us about how we could improve our service to you, or if you are unhappy with the service you are receiving, please let us know by telephoning [state name of principal]. We will carefully consider any complaint as soon as we receive it and do all we can to explain the position to you. If we do not answer your complaint to your satisfaction, you may of course take up the matter with the Institute

Letterhead legend

There is no requirement to use a letterhead legend but the following are offered as examples. Care should be taken in abbreviating the name of the Institute to just initials as this may not be understood by consumer clients or potential consumer clients.

Regulated by the [Institute of Chartered Accountants in England and Wales/Institute of Chartered Accountants of Scotland/Institute of Chartered Accountants in Ireland] for a range of consumer credit activities.

If the firm is also licensed under the Institute's DPB (Investment Business) Handbook the combined legend would be:

Regulated by the [Institute of Chartered Accountants in England and Wales/Institute of Chartered Accountants of Scotland/Institute of Chartered Accountants in Ireland] for a range of investment business and consumer credit activities.

Either of these can be combined with audit, for example:

Registered to carry on audit work in the UK and Ireland and regulated for a range of investment business and consumer credit activities by the [Institute of Chartered Accountants in England and Wales/Institute of Chartered Accountants of Scotland/Institute of Chartered Accountants in Ireland].

Financial promotions

A consumer credit firm cannot make a financial promotion, i.e. an invitation or inducement to the client to engage in regulated activity unless it is either approved by an FCA authorised firm or the promotion is permitted under one of the many exemptions in the Financial Services and Markets Act 2000 (Financial Promotions) Order 2005 (2005/1529).

For a consumer credit firm to provide a proper service to a client, on occasion it may be necessary to call the client without specific permission to discuss an aspect of the exempt credit-related regulated activities that the firm can provide to the client. As the firm is taking the initiative, this is an “unsolicited” promotion and as it is verbal, it is a “real time” communication. The FPO (Article 55) provides a specific exemption that would allow consumer credit firms to make unsolicited real-time promotions to their clients, provided they have previously been engaged to provide professional services to that client and either the services being discussed are incidental to other professional services or the client requests that the firm contacts him in this way. To make it clear to the client that this may happen, a suitable paragraph for an engagement letter would be:

“To enable us to provide you with a proper service there may be occasions when we will need to contact you without your express permission concerning credit-related matters. We may therefore contact you if appropriate. [We would however only do so in our office hours of]. We shall of course comply with any restrictions you may wish to impose which you notify to us in writing.”

Firms who are licensed under the DPB (Investment Business) Handbook can continue to use the similar paragraph that is suggested there.

Brochures

The FPO deals with the advertising of consumer credit activities. Any such promotion has to be either made by a person authorised by the FCA or approved by such a firm. A brochure (a ‘non-real time financial promotion’) describing a consumer credit firm’s regulated activities is a financial promotion.

However the FPO (Article 55A) allows a consumer credit firm to advertise its exempt credit-related regulated services without approval from an authorised firm. This is provided the brochure includes the following statement from the FPO:

"This [firm/company] is not authorised under the Financial Services and Markets Act 2000 but we are able in certain circumstances to offer a limited range of consumer credit-related services to clients because we are members of the [Institute of Chartered Accountants in England and Wales/Institute of Chartered Accountants of Scotland/Institute of Chartered Accountants in Ireland]. We can provide these consumer credit-related services if they are an incidental part of the professional services we have been engaged to provide."

The requirement that the statement must be in the specified terms will not prevent minor changes to the text provided this does not alter the meaning of the statement. The financial promotion may also set out the exempt credit-related regulated services which the consumer credit firm is able to offer its clients, provided it is clear that these are the incidental services to which the statement relates.

This exemption should enable consumer credit firms to issue brochures, websites and other non-real time financial promotions without any need for approval by an authorised person provided the financial promotion is only about exempt credit-related regulated activities.

It is not necessary for the description of the activities to be set out in one place or adjacent to the statement. A brochure or website, for example, may contain details of the activities in various places so long as it is made clear that they will be incidental consumer credit-related services as referred to in the statement (which, as a result, needs to be set out only once in the brochure or website).

Firms who are licensed under the DPB (Investment Business) Handbook can continue to use the similar paragraph that is suggested there.

SCHEDULE 5 - INFORMATION TO BE PROVIDED WHEN DEBT COUNSELLING

Regulation 4.10 requires a consumer credit firm to carry out its engagements in what it reasonably regards as the best interests of the consumer client.

Acting in the best interests of the consumer client includes, amongst other things:

- providing sufficient information and explanations about the suitable options available to the consumer client, and how they operate, including the possible consequences and risks and the reasons why the consumer credit firm considers a particular option most suitable for the consumer client.

Options

When providing information or advice to a consumer client about the alternatives available to deal with their debt problems, the consumer client should be made aware of the following:

- The options available for dealing with their debts, including the actual or potential advantages, disadvantages, costs and risks of each option available with any conditions that apply for entry into each option and which debts may be covered by each option.

This may best be achieved by the consumer credit firm providing the consumer client with sources of impartial information about the options available.

Useful sources of information include the Insolvency Service's guide 'Options for paying off your debts' for England and Wales, the Department of Enterprise, Trade and Investment's (Northern Ireland) guide 'In Debt? Dealing with your creditors' for Northern Ireland, and the Scottish Government's 'Debt Advice and Information Package' (DAIP).

- The consumer credit firm should refer the consumer client to, or provide contact details for, a debt advice provider in circumstances where the consumer credit firm is unable to provide appropriate advice or provide an appropriate solution for the consumer client.
- A consumer credit firm should also refer the consumer client to an appropriate not-for-profit debt advice body in circumstances including where the consumer client: has problems related to debt requiring immediate attention with which the consumer credit firm is unable to assist; or where the consumer client is unable to pay the consumer credit firm's fees.

Examples of not-for-profit advice organisations, which provide free, confidential, and impartial advice, include Citizens Advice, National Debtline and Advice4DebtNI. Details of where to access such advice in the consumer's local area are also available from Advice UK, Money Advice Scotland and the Money Advice Service.

- Even if the consumer credit firms provides more detailed information about the options available, the consumer client should be referred to sources of impartial information and advice as noted above.

Consequences and risks

Where the consumer credit firm provides more detailed information or advice the following matters should be drawn to the consumer client's attention:

- Not making payments under credit agreements or consumer hire agreements will cause the account to go into arrears, default charges being applied and could lead to the creditor taking recovery action. Ignoring correspondence from creditors could also lead to accounts failing into arrears.

There are risks and consequences associated with entering into a debt management plan or other informal arrangement with creditors, including the following;

- a. the time it takes to set up such a plan could result in accounts falling into arrears or increasing arrears;
- b. action to recover debts may involve further costs to the consumer client;
- c. creditors may refuse to accept payments or continue to add interest and charges, or pursue other recovery action;
- d. if the consumer client is a homeowner, creditors may seek a charging order to secure their debt against the property;
- e. there is no guarantee that any ongoing recovery or legal action will be suspended or withdrawn;
- f. someone entering into a debt management plan will be expected to live within a controlled budget; and
- g. most plans only include repayment of consumer credit debts, so the consumer client will have to continue making payments for other outgoings including tax, rent or mortgage and utilities.
- h. Regulation 4.14 prohibits a consumer credit firm from providing debt management plans to its consumer clients.

There are risks and consequences associated with entering into an individual voluntary arrangement or a protected trust deed, as the case may be, including the following:

- a. if the arrangement or deed fails, the risk of bankruptcy;
- b. homeowners may need to release equity from the value of their homes to pay off debts, and that a remortgage may attract higher interest rates or, if no remortgage is available, an individual voluntary arrangement may be extended;
- c. there are restrictions on the expenditure of a person who enters into an individual voluntary arrangement or a protected trust deed;
- d. creditors may not approve the individual voluntary arrangement or the protected trust deed; and
- e. only unsecured debts included within the individual voluntary arrangement or protected trust deed may be discharged at the end of the period and unsecured debts not included remain outstanding;

There are consequences of someone making themselves bankrupt (or being made bankrupt by a creditor), including the following:

- a. a bankrupt's home and on occasion other possessions may be sold;
- b. there are restrictions on the expenditure of an undischarged bankrupt as surplus income may be used to repay creditors;
- c. only unsecured debts included in the bankruptcy will be discharged at the end of the bankruptcy;
- d. for the duration of bankruptcy, an individual cannot act as a company director; and
- e. bankruptcy may impact on an individual's profession – for example accountancy.

Most debt solutions will only offer debt relief from unsecured debts, and certain debts will not be included, such as student loans, fines and debts arising from family proceedings.

Bankruptcy and sequestration, entering into an individual voluntary arrangement, a debt relief order, a debt payment programme or a protected trust deed will be entered on a public register. The Insolvency Service maintains the Individual Insolvency Register which gives details of bankruptcies, current IVAs, Debt Relief Orders (DROs) and current bankruptcy restrictions orders and undertakings. The Accountant in Bankruptcy (AIB) maintains the Register of Insolvencies which holds information on bankruptcies awarded by Scottish courts and PTDs. The AIB also maintains the DAS register which details applications for current debt payment programmes under DAS. Access to the DAS register is restricted to creditors and potential creditors. DAS approved money advisers may also inspect the register on behalf of a consumer. The IVA Register for Northern Ireland is maintained by the Northern Ireland Insolvency Service. The Bankruptcy and Liquidation Register for Northern Ireland is maintained by the Northern Ireland Court Service.

The consequences of entering into a debt solution on the customer's credit rating, including how long the matter will show on the customer's credit file and that the customer may not be able to obtain credit or other financial services in the future.

Adverse information is generally kept on a consumer's credit report for six years.

Bankruptcy, sequestration, a debt relief order, individual voluntary arrangement, a protected trust deed, or a debt payment programme will all be recorded on an individual's credit file.

A debt management plan may also be recorded on the client's credit reference file. Some creditors may ask for a note to be put on the file to say that the client is in debt management plan.

Even missed payments on a credit debt, are recorded on credit reference files, so someone who has been struggling to pay their debts could have adverse information recorded on their file. If someone is in a debt management plan, creditors may still record that payments have been missed, as the client will be paying less than agreed when they took out the original credit agreement.

These kinds of adverse entries may impact on the consumer client's ability to obtain credit in the future.

SCHEDULE 6 - GUIDANCE ON THE DISTANCE MARKETING DIRECTIVE

This is the Institutes' own guidance to members and has not been approved by the FCA.

HM Treasury implemented the EU's Distance Marketing Directive 2002/65/EC through the Financial Services (Distance Marketing) Regulations 2004 (DM Regulations), which is a statutory instrument, 2004 number 2095.

The DM Regulations apply to contracts made exclusively through distance communication, i.e. where contact with the client is only by letter, telephone, email or any other communication which is not face to face, until after the point at which the contract is concluded. The contract must concern a financial service and be with a private client (an individual who is not acting for the purposes of his/her trade, business or profession).

The term financial service is any service of a banking, credit, insurance, personal pension, investment or payment nature. If the activity is a credit-related regulated activity and concerns the provision of a specific contract by the consumer credit firm, it will be a financial service under the DM Regulations.

The Institutes have chosen not to make their own distance marketing regulations and therefore the DM Regulations apply directly to consumer credit firms (see following chart). The DM Regulations require firms to provide pre-contract information and cancellation rights.

Copies of the DM Regulations are available at legislation.gov.uk.

Consumer credit firms should refer to the full text of the DM Regulations for details of their obligations (if appropriate) which includes the rights of a client to cancel an agreement made at a distance.

