

Credit broking: know your permissions

21 February 2020

Firms engaged in credit broking are those that assist consumers in finding a credit provider or finance; this may include payday loans or short-term credit. Often, brokers will charge fees for their services or are paid commission by their lenders.

To operate lawfully, firms that broker credit to consumers by way of business must be registered with and authorised and regulated by the Financial Conduct Authority (FCA). The FCA Handbook sets out the code of practice to which the firms must adhere.

Based on an analysis of firm portfolios, the FCA has recently identified the main concerns with broking firms, particularly in terms of the risks they pose to consumers. It has been emphasised that an increasingly pre-emptive supervisory approach will be taken to ensure that risks are minimised, and firms are monitored effectively.

The main risks identified by the FCA resulting in non-compliance are:

- A lack of knowledge and understanding by firms of the regulatory requirements, resulting in non-compliance.
- A lack of sufficient oversight within firms and accountability, leading to fraud or mis-selling.
- Consumers being taken advantage of by being provided with misleading or inadequate information, leading them to take uninformed decisions and make poor value deals.
- Domestic premise suppliers (“DPS”) present a high risk of harm. In appropriate oversight can mean that consumers may feel pressured into making such deals in a home setting. There will be a higher level of oversight on DPS to ensure such risks are mitigated.
- IT systems within firms are not entirely protected against cyber-attacks and there is inadequate IT resilience.

The FCA's primary concern is the misleading information that is often provided to consumers. Most recently, the FCA issued a Supervisory Notice to Rix Motors to withdraw its advertisements on social media accounts. It is notable that such powers have only been used twice before. Rix Motors contravened the financial promotion rules, failing to provide an accurate and clear advertisement. This sends out a clear message that the FCA will not be reluctant to use their enforcement powers, where appropriate.

What does this mean for firms?

Non-compliance with regulatory requirements means that firms are at risk of prosecution. The FCA has indicated that full use of enforcement capabilities will be made to ensure compliance.

Firms engaged in credit broking must ensure that the appropriate FCA permissions are in place. Annual returns are likely to be subject to increased scrutiny, meaning that appropriate care must be taken.

If firms advertise their services, they should ensure that their information is clear and truthful and in compliance with Chapter 3 of the FCA's Consumer Credit Sourcebook which sets out the rules for financial promotion and communications with customers.

This is a good time for a firm engaged in credit broking to reassess their current practices and position to ensure that they are in compliance with FCA requirements.

The FCA has suggested that firms sign up to their monthly newsletter. This will inform of any regulatory changes and events, as well as offering bite sized videos, further enabling firms to understand their obligations.

Contact



Helen Simm

Partner

Helen.Simm@brownejacobson.com

+44 (0)330 045 2652

Related expertise

Services

Criminal compliance and regulatory

Financial crime

Financial institutions

Financial services and insurance advisory

Financial services regulation

Insurance distribution for financial services businesses