

## Chapter 6

# Post contractual requirements

## 6.8 Post contract business practices: credit brokers

### Application

6.8.1 **R** This section applies to a *firm* with respect to *credit broking*.

### Business practices

6.8.2 **G** Where a *firm* takes on responsibility for giving information to a *customer* or receiving information from a *customer* in accordance with provisions of the CCA (for example, supplying a copy of an executed *regulated credit agreement* under section 61A of the CCA) the *firm* should ensure it is familiar with the relevant statutory requirements and has adequate system and procedures in place to comply with the provision in question.

### Refunds of brokers' fees

- 6.8.3 **G**
- (1) Under section 155 of the CCA an *individual* has a right to a refund of the *firm's* fee (less £5) (or for that fee not to be payable) where the *individual* has not entered into an agreement to which section 155 applies within six *months* of an introduction:
    - (a) to a source of *credit* or of bailment (or in Scotland of hire); or
    - (b) to another *firm* that carries on *credit broking* of the kind specified in article 36A(1)(a) to (c) of the RAO disregarding the effect of paragraph (2) of that article (that is, the effecting of an introduction to a *lender* or an *owner*, or to another *person* who effects such introductions by way of business).

[Note: paragraph 6.1 of CBG]
  - (2) It is immaterial for the purposes of section 155 of the CCA why no agreement has been entered into (for example, an *individual* should be entitled to a refund where the *individual* decides for any reason not to enter into an agreement within the relevant time period).
 

[Note: paragraph 6.2 of CBG]
  - (3) Section 155 does not apply where the introduction is for a *regulated mortgage contract* or a *home purchase plan* and the *person* charging the fee is an *authorised person* or an *appointed representative*. Arranging and advising in relation to *regulated mortgages contracts* and *home purchase plans* are *regulated activities* under the *Regulated Activities Order* and carrying on those activities would require *permissions* covering those activities.

[Note: paragraph 6.4 of CBG]

- (4) In relation to a *credit agreement* the refund would apply to any sum which is an amount that is or would enter in to the *total charge for credit* paid or payable to or via the *credit broker* whether or not the *firm* describes it as a fee or commission.

[Note: paragraphs 6.11 and 6.13 of CBG]

- (5) Where an *individual* withdraws from a *regulated credit agreement* under section 66A of the CCA or cancels a cancellable agreement (see section 67 of the CCA) under section 69 of the CCA the agreement is treated as never have been entered into and hence the period referred to in section 155 continues to apply in these circumstances.

[Note: paragraph 6.10 of CBG]

- 6.8.4** **R** Where section 155 of the CCA applies, a *firm* must respond promptly to a request for a refund; this includes making payment of the refund promptly if a refund is payable.

[Note: paragraph 6.17 of CBG]

- 6.8.4A** **R** If a *customer* has not entered into an agreement referred to in section 155(2) of the CCA within six months of the *customer* being introduced by the *firm* to a potential source of *credit* or of bailment (or in Scotland of hire), or to another *firm* that carries on *credit broking* of the kind specified in article 36A(1)(a) to (c) of the RAO (disregarding the effect of paragraph (2) of that article), as soon as reasonably practicable after the expiry of that six-month period a *firm* must by any method clearly bring to the *customer's* attention:

- (1) the right to request a refund under section 155 of the CCA; and
- (2) how to exercise the right to request the refund.

[Note: paragraph 6.19d of CBG]

- 6.8.4B** **G** The FCA would consider it to be reasonably practicable to comply with **CONC 6.8.4A R** within five working days of the expiry of the six-month period.

- 6.8.5** **G**
- (1) An *individual* does not need to refer to the right under section 155 of the CCA in order to be entitled to a refund.
  - (2) A *firm* should respond promptly to a request for a refund. *Firms* are reminded of the *rule* in **CONC 11.1.12R** to return sums without undue delay, and within 30 calendar days, on cancellation of a *distance contract*.
  - (3) In circumstances where *individuals* request refunds and the *firm* knows, or ought to know, that agreements to which section 155

applies would not be entered into within six *months*, the *firm* should not make the *individuals* wait for the six *month* period to elapse before making the refund.

[**Note:** paragraphs 6.17 and 6.18 of *CBG*]