

CONSUMER CREDIT (MORTGAGE CREDIT DIRECTIVE) INSTRUMENT 2015

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ('the Act'):
- (1) section 137A (The FCA's general rules);
 - (2) section 137R (Financial promotion rules);
 - (3) section 137T (General supplementary powers); and
 - (4) section 139A (The FCA's power to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force as follows:
- (1) Part 1 of Annex A (MCOB) comes into force on 21 September 2015 immediately after Part 1 of Annex D to the Mortgage Credit Directive Instrument 2015 (FCA 2015/18) comes into force; and
 - (2) the remainder of this instrument comes into force on 21 March 2016.

Amendments to the FCA Handbook

- D. The Mortgages and Home Finance: Conduct of Business sourcebook (MCOB) is amended in accordance with Annex A to this instrument.
- E. The Consumer Credit sourcebook (CONC) is amended in accordance with Annex B to this instrument.

Amendments to material outside the Handbook

- F. The Perimeter Guidance manual (PERG) is amended in accordance with Annex C to this instrument.

Notes

- G. In Annexes A and B to this instrument, the "notes" (indicated by "*Editor's Note:*" or "**Note:**") are included for the convenience of readers but do not form part of the legislative text.

Citation

- H. This instrument may be cited as the Consumer Credit (Mortgage Credit Directive) Instrument 2015.

By order of the Board of the Financial Conduct Authority
30 July 2015

Annex A

**Amendments to the Mortgages and Home Finance: Conduct of Business sourcebook
(MCOB)**

In this Annex, underlining indicates new text and striking through indicates deleted text unless otherwise stated.

Part 1: Comes into force on 21 September 2015

TP1.1 Transitional Provisions

[*Editor's Note:* Rows 45 to 52 of this table are to be added on 21 March 2016 by virtue of the Mortgage Credit Directive Instrument 2015 (FCA 2015/18).]

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
20	<i>MCOB</i> TPs 22, 24, 26, 28, 30, 32, 34, 36, 38, and 40, 53 and 55	G	The purpose of TPs 22, 24, 26, 28, 30, 32, 34, 36, 38, and 40, 53 and 55 is to allow <i>firms</i> to apply certain sets of provisions that implement <i>MCD</i> requirements early. A <i>firm</i> may adopt any set of provisions, it need not adopt all of the sets at the same time.	21 September 2015 to 20 March 2016	21 March 2016
21	<i>MCOB</i> TPs 22, 24, 26, 28, 30, 32, 34, 36, 38, and 40, 53 and 55	R	An election to apply any of TP 22, 24, 26, 28, 30, 32, 34, 36, 38, and 40, 53 and 55 does not imply an election to apply any other of TP 22, 24, 26, 28, 30, 32, 34, 36, 38, and 40, 53 and 55 .	21 September 2015 to 20 March 2016	21 March 2016
...					
53	<u><i>MCOB</i> 14</u>	<u>R</u>	<u>A firm to which <i>MCOB</i> 14 will apply from 21 March 2016 may elect to comply with <i>MCOB</i> 14 from 21 September 2015. If so, from the date of that election:</u> <u>(i) the rules and other</u>	<u>21 September 2015 to 20 March 2016</u>	<u>21 March 2016</u>

			<p><u>provisions in CONC will cease to apply to the firm with respect to the conduct governed by MCOB 14, except for CONC 1.2.8R, the rules applied by CONC 1.2.8R, and any related provisions (for example, CONC 1.2.10R); and</u></p> <p><u>(ii) the firm must comply with MCOB 14 with respect to its lending under MCD article 3(1)(b) credit agreements or, as the case may be, its MCD article (3)(1)(b) intermediation activity.</u></p>			
<u>54</u>	<u>MCOB TP 1.53</u>	<u>G</u>	<u>(1)</u>	<p><u>MCOB TP 1.53 allows a firm to apply the MCD requirements relating to lending under MCD article 3(1)(b) credit agreements and MCD article (3)(1)(b) intermediation activity early.</u></p>	<u>21 September 2015 to 20 March 2016</u>	<u>21 March 2016</u>
			<u>(2)</u>	<p><u>A firm should generally make one election under MCOB TP 1.53 for all of its MCD article (3)(1)(b) credit intermediation activity, or all of its lending under MCD article 3(1)(b) credit agreements, at any given time.</u></p>		
			<u>(3)</u>	<p><u>Where a firm wishes to make different elections for different types of MCD article (3)(1)(b) credit intermediation activity or lending under MCD article 3(1)(b) credit agreements, it should maintain processes to ensure that the rules</u></p>		

			<p><u>applicable to each type of activity and each agreement or customer are clearly identifiable to its staff and, on request, to customers and the FCA. Its processes should also ensure that each agreement or customer is dealt with in compliance with the rules applicable to it or them.</u></p>		
55	<u>MCOB TP1.20 to TP 1.53</u>	R	<p><u>If a firm elects under MCOB TP 1.20 to TP 1.53 to comply with provisions of the FCA Handbook which, but for this section, would not be in force before 21 March 2016, those provisions, and any other provisions in the Handbook which they apply or on which they depend, are to apply in respect of the firm from the date of the election but in the form in which they will appear in the Handbook on 21 March 2016.</u></p>	<u>21 September 2015 to 20 March 2016</u>	<u>21 March 2016</u>

Part 2: Comes into force on 21 March 2016

Insert the following new chapter after MCOB 13. The text is not underlined.

14 MCD article 3(1)(b) credit agreements

14.1 Handbook provisions which apply in respect of MCD article 3(1)(b) credit agreements

14.1.1 G The purpose of MCOB 14 is to apply *rules* and *guidance* in MCOB (including, but not restricted to, *rules* that implement the MCD) to:

- (1) *MCD article 3(1)(b) creditors*; and

(2) *MCD article 3(1)(b) credit intermediaries;*

and to identify *rules* and *guidance* in *CONC* that also apply, or may (subject to the election in *MCOB* 14.1.5R) apply, to them.

- 14.1.2 R A *firm* must treat a proposed *credit agreement* as an *MCD article 3(1)(b) credit agreement* if the *firm* knows, or has reasonable cause to suspect, that the purpose of the *credit agreement* is to acquire or retain property rights in land or in an existing or projected building.
- 14.1.3 R Subject to *MCOB* 14.1.5R and *MCOB* 14.1.7R:
- (1) *MCD article 3(1)(b) creditors* and *MCD article 3(1)(b) credit intermediaries* must comply with the following provisions in *MCOB*. These provisions apply with such changes as are necessary to apply them to *MCD article 3(1)(b) credit agreements* and activity undertaken in relation to those agreements (see *MCOB* 14.1.4G):
- (a) *MCOB* 1.2.19G (identifying MCD credit agreements);
 - (b) *MCOB* 2.3 (inducements);
 - (c) *MCOB* 2.5A (the customer's best interests);
 - (d) *MCOB* 2A (Mortgage Credit Directive) except for *MCOB* 2A.1.4R;
 - (e) *MCOB* 3A.1 to *MCOB* 3A.5 (financial promotions and communications with customers);
 - (f) *MCOB* 3B (MCD general information);
 - (g) *MCOB* 4A.2 (adequate explanations);
 - (h) *MCOB* 5A (MCD pre-application disclosure);
 - (i) *MCOB* 6A (MCD disclosure at the offer stage);
 - (j) *MCOB* 7.5 (mortgages: statements);
 - (k) *MCOB* 7A (additional MCD disclosure: start of contract and after sale);
 - (l) *MCOB* 7B (MCD: further advances);
 - (m) *MCOB* 10A (MCD Annual Percentage Rate of Charge);
 - (n) *MCOB* 11.6 (responsible lending and financing);
 - (o) *MCOB* 11A (additional MCD responsible lending requirements);

- (p) *MCOB* 12.3 (early repayment charges);
 - (q) *MCOB* 12.5 (excessive charges); and
 - (r) *MCOB* 13 (arrears, payment shortfalls and repossessions) except for *MCOB* 13.3.9R;
- (2) *MCD article 3(1)(b) credit intermediaries* must additionally comply with the following provisions in *MCOB*. These provisions apply with such changes as are necessary to apply them to *MCD article 3(1)(b) credit agreements* and activity undertaken in relation to those agreements:
- (a) *MCOB* 4.4A.1R(1) and (2) (initial disclosure requirements);
 - (b) *MCOB* 4.4A.4R(1)(a) and (3) (initial disclosure requirements);
 - (c) *MCOB* 4.4A.8R(1)(a), (c), (d) and (2)(e) (initial disclosure requirements); and
 - (d) *MCOB* 4A.1 (additional disclosure by MCD mortgage credit intermediaries); and
- (3) *MCD article 3(1)(b) credit advisers* must additionally comply with the following provisions in *MCOB*. These provisions apply with such changes as are necessary to apply them to *MCD article 3(1)(b) credit agreements* and activity undertaken in relation to those agreements:
- (a) *MCOB* 2A.1.4R (Mortgage Credit Directive);
 - (b) *MCOB* 4.7A (advised sales) except for:
 - (i) *MCOB* 4.7A.1G(2) to (4);
 - (ii) *MCOB* 4.7A.11R to *MCOB* 4.7A.14E; and
 - (iii) *MCOB* 4.7A.24R to *MCOB* 4.7A.25R; and
 - (c) *MCOB* 4A.3 (adequate explanations).
- 14.1.4 G The changes that *MCOB* 14.1.3R requires to be made to *rules* applied by that *rule* include the following:
- (1) any reference to ‘land’ includes a reference to property rights in an existing or projected building;
 - (2) any reference to *regulated mortgage contract* or *MCD regulated mortgage contract* includes a reference to an *MCD article 3(1)(b) credit agreement*; and

- (3) any reference to *qualifying credit* includes a reference to an *MCD article 3(1)(b) credit agreement*.
- 14.1.5 R An *MCD article 3(1)(b) creditor* or *MCD article 3(1)(b) credit intermediary* must elect to comply with either:
- (1) *MCOB 3A.1* to *MCOB 3A.5* (financial promotions and communications with customers); or
 - (2) *MCOB 3A.2*, *MCOB 3A.5* and *CONC 3* (financial promotions and communications with customers) (except for *CONC 3.4*, *CONC 3.5.3R* to *CONC 3.5.10R*, *CONC 3.6.6R*, and *CONC 3.9*);
- and having made an election, the *firm* must comply with the provisions with which it has elected to comply.
- 14.1.6 G (1) A *firm* should generally make one election under *MCOB 14.1.5R* for all of its *MCD article 3(1)(b) credit intermediation activity* or all of its lending under *MCD article 3(1)(b) credit agreements*, at any given time.
- (2) Where a *firm* wishes to make different elections for different types of *MCD article 3(1)(b) credit intermediation activity* or lending under *MCD article 3(1)(b) credit agreements*, it should maintain processes to ensure that the *rules* applicable to each type of activity and each agreement or *customer* are clearly identifiable to its staff and, on request, to *customers* and the *FCA*. Its processes should also ensure that each agreement or *customer* is dealt with in compliance with those *rules*.
- 14.1.7 R The following provisions do not apply to an *MCD article 3(1)(b) creditor* or *MCD article 3(1)(b) credit intermediary* where the conditions in *CONC 1.2.10R(1)* and (2) are fulfilled: *MCOB 7.5* (mortgages: statements) and *MCOB 13* (arrears, payment shortfalls and repossessions) (except for *MCOB 13.3.1AR* to *MCOB 13.3.1BG*, *MCOB 13.3.2AR* to *MCOB 13.3.8G*, and *MCOB 13.6.1R* to *MCOB 13.6.2G*, which apply even where those conditions are fulfilled).
- [**Note:** article 60H(2) of the *Regulated Activities Order*]
- 14.1.8 G *CONC 1.2.10R(1)(a)* relates to high net worth borrowers; the purpose of *MCOB 14.1.7R* is to enable a high net worth borrower under an *MCD article 3(1)(b) credit agreement* to waive the protections and remedies applicable to *regulated credit agreements*, except for those that implement the *MCD*.
- 14.1.9 G *MCD article 3(1)(b) creditors* and *MCD article 3(1)(b) credit intermediaries* are also subject to certain provisions in *CONC*: see *CONC 1.2.8R*.

Annex B

Amendments to the Consumer Credit sourcebook (CONC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

- 1.2.1 R Subject to CONC 1.2.8R and MCOB 14.1.5R, CONC applies to a firm with respect to carrying on credit-related regulated activities and connected activities, unless otherwise stated in, or in relation to, a rule.

...

Agreements secured on land

- 1.2.7 G (1) CONC does not apply to credit agreements secured on land, with some limited exceptions as set out in (3) and (4), below.
- (2) Agreements secured by a second or subsequent charge on the customer's home are, where regulated, governed by MCOB from 21 March 2016 (subject to transitional provisions allowing for the earlier adoption of MCOB). For detailed guidance on the regulation of secured lending, see PERG 4.
- (3) The agreements secured on land to which CONC may apply include the following agreements (unless the agreement in question, or activity in relation to it, is otherwise exempt or excluded):
- (a) an agreement under which the borrower is a relevant recipient of credit (within the meaning of article 60L of the Regulated Activities Order) but is not one or more individuals or trustees; for example, a partnership comprising two or three partners, one but not all of the partners in which is a body corporate; and
- (b) an MCD article 3(1)(b) credit agreement secured on land, less than 40% of which is used as or in connection with a dwelling (whether by the borrower or anyone else) to the extent specified in CONC 1.2.8R.
- (4) Broking in relation to the above agreements may be credit broking under article 36A of the Regulated Activities Order, whether the agreement is regulated or an exempt agreement. There are also some other secured credit agreements which are exempt agreements, but the broking of which may still constitute credit broking, because some exemptions are disregarded by article 36A of the Regulated Activities Order. One example is a loan of more than £25,000 entered into wholly or predominantly for the purposes of a borrower's business and secured by a second or subsequent charge on the borrower's home: such a loan is not a regulated mortgage contract because it is a second charge business loan (as defined by

article 61A of the *Regulated Activities Order*), and is an exempt agreement by virtue of article 60C(3) of the *Regulated Activities Order*; article 36A(4)(a) of the *Regulated Activities Order* disregards that exemption.

Application to MCD article 3(1)(b) creditors and MCD article 3(1)(b) credit intermediaries

1.2.8

R Subject to *CONC 1.2.10R*:

- (1) the following provisions of *CONC* apply to an *MCD article 3(1)(b)* creditor and to an *MCD article 3(1)(b)* credit intermediary:
 - (a) *CONC 1.2* and *CONC 1.3* (application and purpose and guidance on financial difficulties);
 - (b) *CONC 2.2* (general principles for credit-related regulated activities);
 - (c) *CONC 2.7* (distance marketing);
 - (d) *CONC 2.8* (e-commerce); and
 - (e) *CONC 2.9* (prohibition of unsolicited credit tokens);
- (2) the following provisions of *CONC* additionally apply to an *MCD article 3(1)(b)* creditor:
 - (a) *CONC 2.4* (credit references: conduct of business: lenders and owners);
 - (b) *CONC 2.10* (mental capacity guidance);
 - (c) *CONC 4.6* (pre-contract disclosure: continuous payment authorities);
 - (d) *CONC 6.4* (appropriation of payments);
 - (e) *CONC 6.5* (assignment of rights); and
 - (f) *CONC 6.7* (post contract: business practices); and
- (3) the following provisions of *CONC* additionally apply to an *MCD article 3(1)(b)* credit intermediary:
 - (a) *CONC 2.5* (conduct of business: credit broking);
 - (b) *CONC 4.4.2R(4)* (pre-contractual requirements: credit brokers);
 - (c) *CONC 5.4* (conduct of business: credit brokers), and the reference in that rule to *credit broking* includes a reference to *advising on regulated credit agreements for the acquisition*

of land; and

(d) CONC 6.8 (post contract business practices: credit brokers).

1.2.9 G MCD article 3(1)(b) creditors and MCD article 3(1)(b) credit intermediaries are also subject to rules in MCOB, in accordance with MCOB 14.1.3R to MCOB 14.1.5R.

1.2.10 R (1) CONC 1.2.8R and the rules applied by CONC 1.2.8R do not apply to an MCD article 3(1)(b) creditor or MCD article 3(1)(b) credit intermediary where the MCD article 3(1)(b) credit agreement would be an exempt agreement pursuant to article 60H(1) of the Regulated Activities Order but for:

(a) paragraph (1)(b)(ii)(bb) of article 60H of the Regulated Activities Order (which relates to high net worth borrowers); or

(b) article 60HA of the Regulated Activities Order (exemptions not permitted under the MCD).

(2) Agreements of the kind referred to in paragraph (1)(a) are excluded from CONC 1.2.8R and the rules applied by CONC 1.2.8R only if the rules in CONC App 1.4.1R to CONC App 1.4.4R, and the rules to which those rules refer, are complied with.

[Note: article 60H(2) of the Regulated Activities Order]

1.2.11 G The purpose of CONC 1.2.10R(1)(a) is to enable a high net worth borrower under an MCD article 3(1)(b) credit agreement to waive the protections and remedies applicable to regulated credit agreements, except for those that transpose or implement the MCD. The MCD does not contain an exemption or derogation in respect borrowing above a certain amount, unlike the Consumer Credit Directive: the EUR75,000 threshold in that Directive has been implemented in the form of the exemption for high net worth borrowers in article 60H of the Regulated Activities Order.

...

2.2.2 G ...

[Note paragraph 7.14 of ILG and 6.3 of SCLG] ...

...

4.2.2 G ...

[Note: section 55A(6) of CCA and paragraphs 3.1(box) of ILG and 3.5 of

SCLG]

...

7.3.17 R ...
 [Note: paragraphs 7.14 of *ILG*, and 3.7t of *DCG* and 6.3 of *SCLG*]

...

7.3.19 G *Firms* seeking to recover debts under *regulated credit agreements* secured by second or subsequent charges on land in England and Wales should have regard to the requirements of the relevant pre-action protocol (PAP) issued by the Civil Justice Council. ...

...

15 ~~Second charge lending~~ Agreements secured on land

...

15.1.2 G *Firms* which carry on *consumer credit lending* or *credit broking* should comply with all *rules* which apply to that *regulated activity* in *CONC* and other parts of the ~~Handbooks~~ *Handbook*. For example, *CONC 7* applies to matters concerning arrears, default and recovery (including repossession) and applies generally, including to agreements to which this chapter applies. This chapter sets out specific additional requirements and *guidance* that apply in relation to ~~agreements~~ *credit agreements* secured on land (see *CONC 1.2.7G*). *Regulated mortgage contracts* and *home purchase plans* are not *regulated credit agreements* and are excluded, to the extent specified in article 36E of the *Regulated Activities Order*, from *credit broking*.

Conduct

15.1.3 G ...
 [Note: paragraph 3.2 of *SCLG*]

15.1.4 G ...
 [Note: paragraph 3.8 of *SCLG*]

15.1.5 R (1) ...
 [Note: paragraph 2.1 of *SCLG*]

(2) ...
 [Note: paragraph 3.4 of *SCLG*]

(3) ...

- ~~[Note: paragraph 3.4 of SCLG]~~
- (4) ...
~~[Note: paragraphs 3.6 and 4.4 of SCLG]~~
- (5) ...
~~[Note: paragraph 3.6 of SCLG]~~
- 15.1.6 G ...
~~[Note: paragraph 3.4 of SCLG]~~
- 15.1.7 R ...
~~[Note: paragraph 3.5 of SCLG]~~
- 15.1.8 R (1) ...
~~[Note: paragraph 4.2 of SCLG]~~
- (2) ...
~~[Note: paragraph 3.5 of SCLG]~~
- (3) ...
~~[Note: paragraphs 2.1 and 4.2 of SCLG]~~
- (4) ...
~~[Note: paragraph 2.1 of SCLG]~~
- ...
- 15.1.10 G ...
~~[Note: paragraph 3.14 of SCLG]~~
- 15.1.11 R ...
~~[Note: paragraph 4.3 of SCLG]~~
- 15.1.12 R ...
~~[Note: paragraph 4.4 of SCLG]~~
- 15.1.13 R ...
~~[Note: paragraph 4.5 of SCLG]~~
- 15.1.14 G ~~Where a *firm* considers taking action to repossess a *customer's* home, it should, where permitted, establish contact with the holder of any charges in priority to the *firm's* charge to minimise adverse impacts on the *customer*.~~
~~[Note: paragraph 6.2 of SCLG]~~
[deleted]

15.1.15 R ...

~~[Note: paragraph 6.5 of SCLG]~~

...

Appendix 1 Total charge for credit rules

App R (1) ...
1.3.1

(1A) Paragraphs (2) to (5) do not apply where the applicable agreement is an MCD article 3(1)(b) credit agreement.

...

...

App R (1) For the purposes of articles 60H(1)(c) and 60Q(b) of the *Regulated Activities Order* and of CONC 1.2.10R(2), a declaration made by the *borrower* or *hirer* which provides that the *borrower* or *hirer* agrees to forgo the protection and remedies that would be available to the *borrower* or *hirer* if the agreement were a *regulated credit agreement* or a *regulated consumer hire agreement* must comply with CONC App 1.4.2R and either CONC App 1.4.6R or, in the case of an MCD article 3(1)(b) credit agreement, CONC App 1.4.6AR.

(2) For the purposes of articles 60H(1)(d) and 60Q(c) of the *Regulated Activities Order* and of CONC 1.2.10R(2), ...

(3) For the purposes of articles 60H(1)(e) and 60Q(d) of the *Regulated Activities Order* and of CONC 1.2.10R(2), ...

App R A declaration for the purposes of articles 60H(1)(c) and 60Q(b) of the
1.4.2 *Regulated Activities Order* and of CONC 1.2.10R(2) shall ...

...

App R **Declaration by high net worth borrower or hirer**
1.4.6

The declaration for the purposes of articles 60H(1)(c) and 60Q(b) of the *Regulated Activities Order* must have the following form and content-

“Declaration by high net worth borrower or hirer

(articles 60H(1) and 60Q of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001)

I confirm that I have received a copy of the statement of high net worth made in relation to me for the purposes of article 60H(1)(d) or article 60Q(c)

of the Financial Services and Markets Act 2000 (Regulated Activities Order) 2001. ...

App
1.4.6A

R Declaration by high net worth borrower under an MCD article 3(1)(b) credit agreement

The declaration for the purposes of article 60H(1)(c) of the *Regulated Activities Order* and of *CONC 1.2.10R(2)* must have the following form and content-

“Declaration by high net worth borrower under an MCD article 3(1)(b) credit agreement

(article 60H(1)(c) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001)

I confirm that I have received a copy of the statement of high net worth made in relation to me for the purposes of article 60H(1)(d) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

I understand that by making this declaration I will not have the benefit of the protection and remedies that would be available to me under

- (a) the Financial Services and Markets Act 2000, except for those that transpose or implement the Mortgage Credit Directive, Directive 2014/17/EU on credit agreements for consumers relating to residential immovable property, or
- (b) the Consumer Credit Act 1974,

if this were a regulated agreement under those Acts.

I understand that this declaration does not affect the powers of the court to make an order under section 140B of the Consumer Credit Act 1974 in relation to a credit agreement where it determines that the relationship between the lender and the borrower is unfair to the lender.

I am aware that if I am in any doubt as to the consequences of making this declaration then I should seek independent legal advice.”

App
1.4.7

R Statement of high net worth

A statement of high net worth for the purposes of articles 60H(1)(d) and 60Q(c) of the *Regulated Activities Order* must have the following form and content:

“Statement of High Net Worth

(articles 60H(1) and 60Q of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001) ...

Annex C

Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text.

- 4.4.1A G (1) Article 61(3)(c) of the *Regulated Activities Order* states that credit includes a cash loan and any other form of financial accommodation. Although 'financial accommodation' has a potentially wide meaning, its scope is limited by the terms used in the definition of a *regulated mortgage contract* set out in *PERG 4.4.1G*. Whatever form the financial accommodation may take, article 61(3)(a) envisages that it must ~~involve~~ include an obligation to repay on the part of the individual who receives it.
- (2) In the *FCA's* view, an obligation to repay implies the existence, or the potential for the existence, of a debt owed by the individual to whom the financial accommodation is provided (the 'borrower') to the *person* who provides it (the 'lender'). ~~Consequently, for any facility under which any form of financial accommodation is being provided, the test is whether it allows for the possibility that the person providing the financial accommodation may be placed in a position where he becomes a creditor of the individual to whom he is providing it.~~
- (3) For example, a bank would be providing 'credit' which, subject to the other requirements being met, could amount to a *regulated mortgage contract* if it gives a guarantee that:
- (a) creates a debt or a potential debt; and
- (b) allows for deferred payment.