

FEES (CONSUMER BUY TO LET) INSTRUMENT 2015

Powers exercised by the Financial Ombudsman Service

- A. The Financial Ombudsman Service Limited makes this instrument in the exercise of the following powers and related provisions in the Act:
- (1) paragraph 14 (The scheme operator's rules) of Schedule 17;
 - (2) paragraph 15 (Fees) of Schedule 17; and
 - (3) paragraph 18 (Terms of reference to the scheme) of Schedule 17.
- B. The making of these rules, guidance and standard terms by the Financial Ombudsman Service Limited is subject to the consent and approval of the Financial Conduct Authority.

Powers exercised by the Financial Conduct Authority

- C. 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 137T (General supplementary powers);
 - (3) section 139A (Power of the FCA to give guidance);
 - (4) paragraph 23 (Fees) of Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority) of the Act; and
 - (5) article 25 of The Mortgage Credit Directive Order 2015.
- D. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.
- E. The Financial Conduct Authority approves and consents to the making (and amendment) of the rules and standard terms that are made and amended by the Financial Ombudsman Service Limited under this instrument.

Commencement

- F. This instrument comes into force as follows:
- (1) Annex A and Part 1 of Annex B to this instrument come into force on 20 July 2015;
 - (2) Part 2 of Annex B to this instrument comes into force on 1 April 2016.

Amendments to the FCA Handbook

- G. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- H. The Fees manual (FEES) is amended in accordance with Annex B to this instrument.

Citation

- I. This instrument may be cited as the Fees (Consumer Buy to Let) Instrument 2015.

By order of the Board of the Financial Ombudsman Service Limited
3 June 2015

By order of the Board of the Financial Conduct Authority
18 June 2015

Annex A

Amendments to the Glossary of definitions

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

- CBTL firm*
- (1) (other than in *DISP*) a *person* included by the *FCA* in the *Financial Services Register* pursuant to article 8(1) of the *MCD Order*.
 - (2) (in *DISP* and *FEES* 5.5B) a person within (1) who is not a *firm*.

Annex B

Amendments to the Fees manual (FEES)

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

Part 1: Comes into force on 20 July 2015

1.1.1 G *FEES* applies to all *persons* required to pay a fee or levy under a provision of the *Handbook*. The purpose of this chapter is to set out to whom the *rules* and *guidance* in *FEES* apply. *FEES* 2 (General Provisions) contains general provisions which may apply to any type of fee payer. *FEES* 3 (Application, Notification and Vetting Fees) covers one-off fees payable on a particular event for example various application fees (including those in relation to authorisation, variation of *Part 4A permission*, registration as a *CBTL firm*, *listing* and the Basel Capital Accord) and fees relating to certain notifications and document vetting requests. *FEES* 4 (Periodic fees) covers all periodic fees and transaction reporting fees. *FEES* 5 (Financial Ombudsman Service Funding) relates to *FOS* levies and case fees (in *FEES* ~~5.5A~~ 5.5B). *FEES* 6 (Financial Services Compensation Scheme Funding) relates to the *FSCS* levy. *FEES* 7 relates to the *CFEB* levy.

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2.1.5 G Paragraph 23 of Schedule 1ZA of the *Act*, regulation 92 of the *Payment Services Regulations*, ~~and~~ regulation 59 of the *Electronic Money Regulations* and article 25(a) of the *MCD Order* enable the *FCA* to charge fees to cover its costs and expenses in carrying out its functions. The corresponding provisions for the *FSCS* levy, *FOS* levies' and *CFEB* levies are set out in *FEES* 6.1, *FEES* 5.2 and *FEES* 7.1.4G respectively. Case fees payable to the *FOS Ltd* are set out in *FEES* ~~5.5A~~ 5.5B. *Fee-paying payment service providers*, ~~and~~ *fee-paying electronic money issuers* and *CBTL firms* are not required to pay the *FSCS* levy but are liable for *FOS* levies.

...

2.1.5A G Regulation 92 of the *Payment Services Regulations* and regulation 59 of the *Electronic Money Regulations* each provide that the functions of the *FCA* under the respective regulations are treated for the purposes of paragraph 23 of Schedule 1ZA to the *Act* as functions conferred on the *FCA* under the *Act*. ~~Paragraphs~~ Paragraph 23(7) ~~and 20(1)(b)~~ however, have ~~has~~ not been included. ~~These are, respectively,~~ This is the *FCA*'s obligation to ensure that the amount of penalties received or expected to be received are not to be taken into account in determining the amount of any fee payable ~~and the provision that allows fees to be raised to repay borrowed monies in respect of expenses incurred, before or after the coming into force of the *Act* or the Bank of England Act 1998.~~

2.1.5B G Article 25 of the *MCD Order* provides that the functions under the *MCD*

Order are to be treated for the purposes of paragraph 23 of Schedule 1ZA to the *Act* as functions conferred on the *FCA* under the *Act*.

...

Recovery of fees

- 2.2.3 G Paragraphs 23(8) and 27 of Schedule 1ZA and paragraphs 31(7) and 35 of Schedule 1ZB of the *Act* permit the *FCA* and *PRA* respectively to recover fees (including in respect of the *FCA*, fees relating to *payment services*, the issuance of *electronic money*, fees relating to *CBTL firms* and, where relevant, *FOS* levies and *CFEB levies*), and section 213(6) permits the *FSCS* to recover shares of the *FSCS* levy payable, as a debt owed to the *FCA*, *PRA* and *FSCS* respectively, and the *FCA*, *PRA* and *FSCS*, as relevant, will consider taking action for recovery (including interest) through the civil courts.

...

- 3.1.1A R A reference to *firm* in this chapter includes a reference to a *fee-paying payment service provider*, a *CBTL firm* and a *fee-paying electronic money issuer*.

...

- 3.1.4 G Most of the detail of what fees are payable by the persons referred to in *FEES* 3.1.3G is set out in *FEES* 3 Annex 1 - *FEES* 3 Annex ~~40R~~ 10AR.

...

- 3.1.6C G Application fees for registration under article 8(1) of the *MCD Order* are set out in *FEES* 3 Annex 10AR. The fee depends on whether the *firm* holds an existing *Part 4A permission* or an *interim permission* or has previously registered as a *CBTL firm* and that registration has been revoked under article 13 of the *MCD Order*.

...

- 3.2.5 G (1) The appropriate authorisation or registration fee is an integral part of an application for, or an application for a variation of, a *Part 4A permission*, authorisation, registration or variation under the *Payment Services Regulations* or the *Electronic Money Regulations*, registration under article 8(1) of the *MCD Order* or notification or registration under the *AIFMD UK regulation*. Any application or notification received by the *appropriate regulator* without the accompanying appropriate fee, in full and without deduction (see *FEES* 3.2.1R), will not be treated as an application or notification made, incomplete or otherwise, in accordance with section 55U(4), or section 55H or 55I (as the case may be), of the *Act* or regulation 5(3) or 12(3) of the *Payment Services Regulations* or regulation 5 or 12 of the *Electronic Money Regulations* or regulation 11(1) and

60(a) of the *AIFMD UK regulation* or article 9 of the *MCD Order*. Where this is the case, the *appropriate regulator* will contact the applicant to point out that the application cannot be progressed until the appropriate fee has been received. In the event that the appropriate ~~authorisation~~ fee, in full and without deduction, is not forthcoming, the application will be returned to the applicant and no application will have been made.

...

3.2.7 R Table of application, notification, vetting and other fees payable to the FCA

Part 1: Application, notification and vetting fees		
(1) Fee payer	(2) Fee payable	Due date
(a) Any applicant for <i>Part 4A permission</i> (including an <i>incoming firm</i> applying for <i>top-up permission</i>) whose fee is not payable pursuant to sub-paragraph (ga) of this table	<p>(1) Unless (2) or (3) applies, in respect of a particular application, the highest of the tariffs set out in FEES 3 Annex 1 part 1 which apply to that application.</p> <p>(2) In respect of a particular application which is:</p> <p>(i) a straightforward or moderately complex case for the purposes of FEES 3 Annex 1 part 1, and</p> <p>(ii) only involves a simple change of legal status as set out in FEES 3 Annex 1 part 6,</p> <p>the fee payable is 50% of the tariff that would otherwise be payable in FEES 3 Annex 1 part 1.</p> <p><u>(3) If the applicant applies for registration under article 8(1) of the MCD Order at the same time as applying for a Part 4A permission, the fee payable is the higher of:</u></p> <p><u>(i) the fee otherwise payable in (1) or (2); and</u></p> <p><u>(ii) the fee payable in FEES</u></p>	On or before the application is made

	<u>3 Annex 10AR.</u>	
...		
(p) A <i>firm</i> applying for a variation of its <i>Part 4A permission</i> whose fee is not payable pursuant to sub-paragraph (ga) of this table	<p>(1) Unless (2), (2A), (3), (3A), or (3B), or <u>3(C)</u> applies, if the proposed new business of the <i>firm</i> would fall within one or more activity groups specified in Part 1 of <i>FEES 4 Annex 1AR</i> or Part 1 of <i>FEES 4 Annex 1BR</i> not applicable before the application, the fee is 50% of the highest of the tariffs set out in <i>FEES 3 Annex 1</i> which apply to that application.</p> <p>...</p> <p><u>(3C) If the applicant applies for registration under article 8(1) of the <i>MCD Order</i> at the same time as it applies for a variation of its <i>Part 4A permission</i>, the fee is the highest of the fees set out in <i>FEES 3 Annex 10AR</i> and the amount otherwise payable in (1), (2), (2A), (3), (3A) or (3B), or (4).</u></p> <p>...</p>	...
...		
(zt) An applicant for registration in the <i>Financial Services Register</i> under article 8(1) of the <i>MCD Order</i> .	<p><u>Unless (1), or (2) applies, the fee as set out in <i>FEES 3 Annex 10A</i>.</u></p> <p>(1) If the applicant is applying for a <i>Part 4A permission</i> at the same time as it applies for registration under article 8(1) of the <i>MCD Order</i>, the fee payable in row (a), column (2)</p>	<u>On or before the application is made.</u>

	<p><u>paragraph (3) of this Table.</u></p> <p>(2) <u>If the applicant is applying for a variation of a <i>Part 4A permission</i> at the same time as it applies for registration under article 8(1) of the <i>MCD Order</i>, the fee payable in row (p), column 2 paragraph (3)(c) of this Table.</u></p>	
...		

...

After FEES 3 Annex 10 insert the following new Annex. The text is not underlined.

3 Annex 10AR Fees payable for registration as a CBTL firm under article 9 of the MCD Order

Application type for registration under article 9 of the MCD Order	Amount payable
(1) An applicant who, at the time of application, holds a <i>Part 4A permission</i> or <i>interim permission</i> and has not had a registration as a <i>CBTL firm</i> revoked under article 13 of the <i>MCD Order</i> .	£100
(2) An applicant who, at the time of application, <ul style="list-style-type: none"> (a) does not hold a <i>Part 4A permission</i> or <i>interim permission</i>; or (b) has previously held a registration as a <i>CBTL firm</i> which was revoked under article 13 of the <i>MCD Order</i> 	£500

Part 2: Comes into force on 1 April 2016

4.1.1A R A reference to *firm* in this chapter includes a reference to a *fee-paying payment service provider*, a *CBTL firm* and a *fee-paying electronic money issuer*.

...

4.1.4 G ...

- (3) The periodic fees for *fee-paying payment service providers*, *fee-paying electronic money issuers*, *CBTL firms* and *issuers of regulated covered bonds* are set out in *FEES 4 Annex 11R*. This annex sets out the activity groups, tariff base, valuation dates and, where applicable, the flat fees due for these *firms*.

...

4.2.11R Table of periodic fees payable to the FCA

1 Fee payer	2 Fee payable	3 Due date	4 Events occurring during the period leading to modified periodic fee
Any <i>firm</i> (except an <i>AIFM</i> qualifier, <i>ICVC</i> or a <i>UCITS</i> qualifier)	<i>Firm</i> receives <i>permission</i> , or becomes authorised or registered under the <i>Payment Services Regulations</i> , article 8 of the <i>MCD Order</i> or the <i>Electronic Money Regulations</i> ; or <i>firm</i> extends <i>permission</i> or its <i>payment service</i> activities
...			

...

4.3.3A R The periodic fee referred to in *FEES 4.3.1R* in relation to *fee-paying payment service providers*, *CBTL firms* and *fee-paying electronic money issuers* is calculated in accordance with *FEES 4 Annex 11R*.

...

4.3.6 R ...

- (3) If a *firm* has applied to cancel its *Part 4A permission* in the way set out in *SUP 6.4.5D* (Cancellation of permission), or its status as a

payment institution under regulation 10 of the *Payment Services Regulations* (Cancellation of authorisation) or as regulation 10 is applied by regulation 14 of the *Payment Services Regulations* (Supplementary provisions), or its status as an *electronic money issuer* under regulation 10 of the *Electronic Money Regulations* (Cancellation of authorisation) or as regulation 10 is applied by regulation 15 of the *Electronic Money Regulations* (Supplementary provisions), or its registration as a *CBTL firm* under article 13(c) *MCD Order* then (1) and (2) do not apply but it must pay the total amount due when the application is made.

...

- (4A) If the *FCA* has cancelled a *firm's* authorisation or registration under regulation 10 of the *Payment Services Regulations* or regulation 10 of the *Electronic Money Regulations* or its registration under regulation 10 as applied by regulation 14 of the *Payment Services Regulations* or its registration under regulation 10 as applied by regulation 15 of the *Electronic Money Regulations*, or its registration under article 13 (except under article 13(c)) of the *MCD Order* then (1) and (2) do not apply but the *firm* must pay the total amount due immediately before the cancellation becomes effective.

...

...

- 4.3.13 R (1) If:
- (a) a *firm* makes an application to vary its *permission* (by reducing its scope), or cancel it, in the way set out in *SUP* 6.3.15D(3) (Variation of permission) and *SUP* 6.4.5D (Cancellation of permission), or applies to vary (by reducing its scope) or cancel its authorisation or registration (regulation 8 and 10(1) of the *Payment Services Regulations* including as applied by regulation 14 of the *Payment Services Regulations*) or applies to cancel its authorisation or registration (regulation 10 and 12 of the *Electronic Money Regulations* including as applied by regulation 15 of the *Electronic Money Regulations*) or applies for revocation of its registration under article 13(c) of the *MCD Order*; an *issuer* makes an application for de-listing; or a *sponsor* notifies the *FCA* of its intention to be removed from the list of approved *sponsors*; and
 - (b) the *firm*, *issuer* or *sponsor* makes the application or notification referred to in (a) before the start of the *fee year* to which the fee relates;

FEES 4.2.1R applies to the *firm* as if the relevant variation or cancellation of the *firm's permission* or authorisation or registration

under the *Payment Services Regulations*, *MCD Order* or the *Electronic Money Regulations*, de-listing or removal from the list of approved *sponsors*, took effect immediately before the start of the *fee year* to which the fee relates.

- (2) But (1) does not apply if, due to the continuing nature of the business, the variation, cancellation, de-listing or removal is not to take effect on or before 30 June of the *fee year* to which the fee relates.

...

- 4.3.14 G Where a *firm* has applied to cancel its *Part 4A permission*, or its authorisation or registration under the *Payment Services Regulations* or the *Electronic Money Regulations*, or its registration as a *CBTL firm* under article 13(c) the *MCD Order*, or the *appropriate regulator* has exercised its *own-initiative powers* to cancel a *firm's Part 4A permission* or the *appropriate regulator* has exercised its powers under regulation 10 (Cancellation of authorisation), including as applied by regulation 14 (Supplementary provisions) of the *Payment Services Regulations* to cancel a *firm's* authorisation or registration under the *Payment Services Regulations* or the *appropriate regulator* has exercised its powers under regulation 10 (Cancellation of authorisation), including as applied by regulation 15 (Supplementary provisions) of the *Electronic Money Regulations*, or the *FCA* has exercised its powers under article 13 (Revocation of registration), excluding article 13(c), of the *MCD Order*, the due dates for payment of periodic fees are modified by *FEES* 4.3.6R(3), *FEES* 4.3.6R(4) and *FEES* 4.3.6R(4A) respectively.

4 Annex 11R Periodic fees in respect of payment services carried on by fee-paying payment service providers under the Payment Services Regulations and electronic money issuance by fee-paying electronic money issuers under the Electronic Money Regulations and issuance of regulated covered bonds by issuers and CBTL business carried on by CBTL firms under the MCD Order in relation to the period 1 April 2014 to 31 March 2015

...

<u>Part 2B – Activity groups relevant to CBTL firms</u>	
<u>This table shows how <i>CBTL business</i> carried on by <i>CBTL firms</i> is linked to activity groups ('fee-blocks'). A <i>CBTL firm</i> can use the table to identify which fee-blocks it falls into based on its registration</u>	
<u>Activity Group</u>	<u>Fee payer falls into this activity group if</u>
<u>G.20 <i>CBTL Lender</i></u>	<u>It is a <i>CBTL Lender</i>.</u>

<u>G.21 CBTL arranger and CBTL advisor</u>	<u>It is a CBTL arranger or a CBTL advisor.</u>
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Part 3	
This table indicates the tariff base for each fee-block. The tariff base is the means by which the <i>FCA</i> measures the amount of business conducted by <i>fee-paying payment service providers</i> , <i>fee-paying electronic money issuers</i> , <u>CBTL firms</u> and <i>issuers of regulated covered bonds</i> .	
Activity Group	Tariff base
...	
<u>G.20</u>	<u>Not applicable</u>
<u>G.21</u>	<u>Not applicable</u>

...

Part 5 – Tariff rates		
Activity group	Fees payable in relation to [2015/16]	
...		
<u>G.20</u>	<u>Flat fee (£)</u>	<u>[TBC]</u>
<u>G.21</u>	<u>Flat fee (£)</u>	<u>[TBC]</u>

...

- 5.1.1-A R Whilst no rule made by the *FCA* in this chapter applies to *VJ participants*, some of the *guidance* may do. The application of rules made by the *FOS Ltd* in this chapter is set out in *FEES 5.5A 5.5B* and described in *FEES 5.1.2AG*.
- 5.1.1A R A reference to *firm* in this chapter includes a reference to a *fee-paying payment service provider*, ~~and~~ *fee-paying electronic money issuer* and a *CBTL firm*.
- 5.1.1B R *FEES 5.1.1AR* does not apply to *FEES 5.5A 5.5B* or *FEES 5 Annex 2R* or *Annex 3R* unless otherwise stated in rules made by the *FOS Ltd*.
- ...
- 5.1.2A G Table of *FEES 5* rules made by the *FOS Ltd*

<i>FEES 5 rules made by the FOS Ltd</i>	Description
<i>FEES 5.5A 5.5B</i>	Rules relating to case fees
...	

...

5.5B.24 R Where a respondent ceases to be a *firm, payment service provider, electronic money issuer, CBTL firm, or VJ participant* (as the case may be) part way through a *financial year* it will remain liable to pay case fees under *FEES 5.5B* in respect of cases within the jurisdiction of the *Financial Ombudsman Service*.

5 Annex 1R Annual General Levy Payable in Relation to the Compulsory Jurisdiction for [2015/16]

...

Industry block	Tariff base	General levy payable by firm
...		
<input checked="" type="checkbox"/> <i>CBTL firms</i>	<u>Flat fee</u>	[TBC]

5 Annex 2R Annual Levy Payable in Relation to the Voluntary Jurisdiction for [2015/16]

Voluntary jurisdiction – annual levy for VJ participants				
Industry block and business activity		Tariff basis	Tariff rate	Minimum levy
	...			
10V	Persons not covered by 1V to 9V undertaking activities which are: (a) ...; or (b) <i>payment services</i> ; or

	<u>or</u> would be if they were carried on from an establishment in the <i>United Kingdom</i> .			
	...			
<u>13V</u>	<u>Persons not covered by 1V to 9V undertaking activities which are <i>CBTL activities</i> or would be if they were carried on from an establishment in the <i>United Kingdom</i></u>	[TBC]	[TBC]	[TBC]