



## **FCA Principles**

<b>Chapter 1</b>	<b>FCA Principles</b>
1.1	Introduction to the Statements of Principle
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## Chapter 1 – FCA Principles

### 1.1 Introduction

Formulated by the Financial Conduct Authority, the Principles are intended to form the apex of the regulatory structure, setting the overall standards at a high level of generality.

FCA Authorised firms and their representatives are required to act at all times in accordance with the Principles.

The Principles are not exhaustive of the standards expected. Conformity with the Principles does not absolve a failure to observe other requirements, while the observance of other requirements does not necessarily amount to conformity with the Principles.

Disciplinary proceedings can be based on breaches of the Principles. References to ‘firm’ also include individuals and companies and references to customers refer also to potential customers.

The Principles are set out in Sections 1.2 and 1.3 with an accompanying commentary.

### 1.2 The Principles in relation to the business

#### 1. Integrity

A firm must conduct its business with integrity.

#### **Commentary:**

This is an overriding Principle. “Integrity” is essentially a matter of honesty and straightforwardness, while fairness involves disinterestedly treating cases on their merits. The observance of high standards of integrity and fair dealing can, of course, involve different conduct in different circumstances.

#### 2. Skill, Care and Diligence

A firm must conduct its business with due skill, care and diligence.

#### **Commentary:**

As noted for Principle 1, this Principle may be regarded as an overriding Principle, with a wider coverage and higher level of generality than those that follow. The requirement to act with due skill, care and diligence, may be treated as largely a statement of the existing Law. However, the significance of a Principle on the subject is that it makes a failure of skill, care or diligence a disciplinary matter, involving the regulator, rather than merely a ground for private dispute.

#### 3. Management and Control

A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

#### **Commentary:**

A firm should organise and control its internal affairs in a responsible manner, keeping proper records, and where the firm employs staff or is responsible for the conduct of business by others, should have adequate arrangements to ensure that they are suitable, adequately trained and properly supervised and that it has well-defined compliance procedures and risk management systems.

#### 4. Financial Prudence

A firm must maintain adequate financial resources.

**Commentary:**

This Principle has little practical application to the Business of the firm, other than in relation to the business' Solvency Requirement.

## **5. Market Conduct**

A firm must observe proper standards of market conduct.

**Commentary:**

This Principle contains two separate provisions, the first dealing with the need to observe high standards of market conduct, the second, with compliance with certain external 'codes or standards'. It imports the idea of high standards applying within a particular market, perhaps as a result of custom and practice.

In requiring compliance with external 'codes or standards', enable incorporation into the Principles such other 'codes or standards' to be achieved by a supplementary instrument of endorsement, made under the same powers as the Standards themselves. A likely candidate for endorsement is the British Code of Advertising Practice.

## **6. Customers' interests**

A firm must pay due regard to the interests of its customers and treat them fairly.

**Commentary:**

As an intermediary firm, the business must act in the interests of its customers at all times. Customer interests should not be compromised.

## **7. Communications with Clients**

A firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading.

**Commentary:**

The information needed to enable a customer to make a balanced and informed decision will clearly depend on the nature of the customer, and on the nature of the advice given to him. In the relationship between a firm and a customer it advises, there is a division of responsibility for decision-taking with the firm taking responsibility for its advice and the customer taking responsibility for evaluating that advice and taking a decision on it. The greater the share of responsibility undertaken by the customer, the more it seems that the Principle would require him to be given information to enable him to take a balanced and informed decision.

The Principle has a direct association with any advertising with the over-riding intention that any promotional material must be clear, fair and not misleading.

## **8. Conflicts of Interest**

A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.

**Commentary:**

Principle 8 clearly highlights the need to deal fairly in circumstances of Conflicts of Interest.

## **9. Customers: relationships of trust**

A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.

### ***Commentary:***

Principle 9 establishes a 'know your customer' requirement at the level of the Principles. Any advice given to a customer must take into account their personal and financial circumstances.

## **10. Clients' Assets**

A firm must arrange adequate protection for clients' assets when it is responsible for them.

### ***Commentary:***

The firm is not authorised to handle client money, nor is it likely to hold client assets. It should be noted, however, that loan offers, policy documents and the like should be forwarded to customers in a timely fashion and that reasonable care should be taken with original documents such as birth certificates, passports and so on.

## **11. Relations with Regulators**

A firm should deal with its regulators in an open and co-operative way and must disclose to the FCA, appropriately, anything relating to the firm of which the FCA would reasonably expect notice.

### ***Commentary:***

The general duty to deal in an open and co-operative manner is expanded by a more specific requirement for a firm to keep the regulator promptly informed of anything concerning the firm, which might reasonably be expected to disclose to it. This might cover changes in the firm's ownership, impending litigation, which may adversely affect its Financial Resources, disciplinary action being taken elsewhere, and so on.

## **1.3 The Principles in relation to Approved Persons**

### **Statement of Principle 1**

An approved person must act with integrity in carrying out his controlled function.

### **Statement of Principle 2**

An approved person must act with skill, care and diligence in carrying out his controlled function.

### **Statement of Principle 3**

An approved person must observe proper standards of market conduct in carrying out his controlled function.

### **Statement of Principle 4**

An approved person must deal with the FCA and with other regulators in an open and cooperative way and must disclose appropriately any information of which the FCA would reasonably expect notice.

**Statement of Principle 5**

An approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function is organised so that it can be controlled effectively.

**Statement of Principle 6**

An approved person performing a significant influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled function.

**Statement of Principle 7**

An approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system.



## **Client Categorisation**

<b>Chapter 2</b>	<b>Client Categorisation</b>
2.1	Why categorise clients?
2.2	Notifying clients of their categories.
2.3	Categories of Client
2.4	Acting as agent
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2.6	Eligible Counterparties
2.7	Mixed Business
2.8	Re-Categorisation of clients
2.9	Record Keeping
2.10	Mortgage and General Insurance Firms



## Chapter 2 – Client Categorisation

The client categorisation requirement was introduced by the FSA in December 2001, and subsequently amended by the Markets in Financial Instruments Directive in November 2007. The MiFID client categories will apply to all firms (both MiFID and non-MiFID firms).

Firms that do not hold client money, do not hold the permissions to Deal as Agent or Principles and do not advise on MiFID instruments (e.g. derivatives) will usually be classed as a Non-MiFID firm.

### 2.1 Why categorise clients?

The FCA requires that each client, with whom the firm does business, is categorised to ensure that regulatory protection is focussed upon clients that need it most with a 'lighter-touch' approach relevant to inter-professional business.

### 2.2 Notifying Clients of their categories

In relation to MiFID, a firm must notify a new client of its categorisation as a retail client, professional client, or eligible counterparty and also, prior to the provision of the services, inform a client, in a durable medium, about any right that client has to request a different categorisation and any limitations to the level of client protection that such a different categorisation would entail.

A firm must allow its clients to request re-categorisation as a client that benefits from a higher degree of protection. This means a firm must notify a client that it has categorised as a professional client or an eligible counterparty of its rights to request a different categorisation **whether or not** the firm will agree to such requests. This can be included in your client agreement. A firm need only notify a client of a right to request a different categorisation involving a lower level of protection if it is prepared to consider such requests, e.g. advising a retail client of its rights to be categorised as an elective professional client.

### 2.3 Categories of client

Prior to conducting business with a client, the firm must establish into which category a client will fit. The MiFID categories are broadly similar to the current categories although there are some differences to the criteria that apply to each category.

Previous Investment Categories	Current Investment Categories
Private Customer	Retail Client
Intermediate Customer	Professional Client - Per Se - Elective
Market Counterparties	Eligible Counterparty - Per Se - Elective

- **Retail Client** - This is a client who is not a professional client or an eligible counterparty
- **Professional Client** – This is a client that is either a per se professional client or an elective professional client
- **Eligible Counterparty** – An eligible counterparty is a client that is either a per se eligible counterparty or an elective counterparty.

In practice, the majority, if not all of the firms' clients will be classified as a Retail Client for Investment business. The firm may only deal with those categories of client currently noted in their FCA permissions. This information is available under customer type on the FCA register, within a firm's permissions.

General Insurance Intermediaries need to classify their customers as either a consumer or commercial customer customers. They will not be affected by MiFID changes but could be affected by the Insurance Mediation Directive (IMD).

The FCA have not set any client categories for Mortgage clients.

Your Client Agreement confirms that the firm will generally treat all clients as retail clients or in the case of mortgage and general insurance activities, as 'Consumer' or 'Commercial' customer.

In the event that you wish to re-categorise any of your clients, or categorise your client as either an elective professional or elective eligible counterparty, you must seek approval from your Compliance Officer.

Additionally, guidance can be sought from Compliance.

## **2.4 Acting as agent**

You may, on occasion, come across a situation where one party is acting on behalf of the other. The firm must establish who the client actually is and classify them.

If a person 'B' is acting as agent for a person 'A', the client of the firm is person 'B', the agent, and not person 'A', providing;

- 'B' is another authorised firm or an authorised overseas financial services institution; and
- avoidance of the firm's duties it would otherwise owe to person 'A', is not the main purpose of the relationship

This would not apply if the firm has agreed in writing with 'B' to treat 'A' as the client.

If 'B' is acting for more than one client, the firm may send single communications to 'B' and not to all clients. There are exclusions to this concession and such circumstances should be referred to your Compliance Officer.

## **2.5 Professional Clients**

The following are classed as per se professional clients:

a) An entity required to be authorised or regulated to operate in the financial markets. The following is a list of all authorised entities:

- A credit institution;
- An investment firm;
- Any other authorised or regulated financial institution;
- An insurance company;
- A collective investment scheme or the management company of such a scheme;
- A pension fund or the management company of a pension fund;
- A commodity or commodity derivatives dealer;
- A local – a firm which is a member of a futures and options exchange;
- Any other institutional investor.

b) In relation to MiFID business, a large business meeting two of the following size requirements on a company basis:

- A balance sheet total of EUR 20,000,000;
- Net turnover of EUR 40,000,000;
- Own funds of EUR 2,000,000.

- c) In relation to business that is not MiFID business, a large business meeting either of the following conditions:
- d) A body corporate (including a LLP) which has (or any of whose holding companies or subsidiaries has) called up share capital of at least £10 million (or its equivalent in any other currency at the relevant time);
- e) A large undertaking that meets (or any of whose holding companies or subsidiaries meets) two of the following tests:
  - A balance sheet total of EUR 12,500,000;
  - A net turnover of EUR 25,000,000;
  - An average number of employees during the year of 250.
- f) A national or regional government, a public body that manages public debt, a central bank, an international institution or another similar international organisation.
- g) Another institutional investor whose main activity is to invest in financial instruments (in relation to the firm's MiFID business) or designated investments (in relation to the firm's other business). This includes entities dedicated to the securitisation of assets or other financing transactions.

#### Elective professional clients.

A firm may treat a client as an elective professional client if it complies with points 1 and 3, and where applicable 2. Before deciding to accept a request for re-categorisation as an elective professional client, a firm must take all reasonable steps to ensure that the client requesting to be treated as an elective professional client satisfied the qualitative and, where applicable, the quantitative test. These tests are noted below.

1. The firm undertake an adequate assessment of the expertise, experience and knowledge of the client that gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the client is capable of making his own investment decisions and understanding the risks involved (the qualitative test).
2. In relation to MiFID business, in the course of that assessment, at least two of the following criteria are satisfied:
  - a. The client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters.
  - b. The size of the client's financial instrument portfolio, defined as including cash deposits and financial instruments, exceeds EUR 500,000.
  - c. The client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged. (These are known as the quantitative tests)
3. The following procedure is followed:
  - a) The client must state in writing to the firm that it wishes to be treated as a professional client either generally or in respect of a particular service or transaction or type of transaction or product;
  - b) The firm must give the client a clear written warning of the protections and investor compensation rights the client may lose; and
  - c) The client must state in writing, in a separate document from the contract, that it is aware of the consequences of losing such protections.

Professional clients are responsible for keeping the firm informed about any change that could affect their current categorisation. Information regarding this can be included in your Client Agreement. However, if a firm becomes aware that a client no longer fulfils the initial conditions that made it eligible for categorisation as an **elective** professional client, the firm must take the appropriate action. Where this would involve re-categorising that client as a retail client, the firm must notify that client of its new categorisation.

## 2.6 Eligible Counterparties

- a) An eligible counterparty is a client that is either a per se eligible counterparty or an elective eligible counterparty ie where a firm deals on own account, or executes orders on behalf of clients or reception and transmission of orders where the service or activity is with or for an eligible counterparty.
- b) In relation to MiFID business, a client is an eligible counterparty in relation to eligible counterparty business.

### Per se eligible counterparties.

The following are per se eligible counterparties, and this will include an entity from an EEA state that is equivalent to any of the following.

- An investment firm;
- A credit institution;
- An insurance company;
- A collective investment scheme authorised under UCITs Directive or its management company;
- A pension fund or its management company
- Another financial institution authorised or regulated under European Community legislation or the national law of an EEA State;
- An undertaking exempted from the application of MiFID under Article 2;
- A national government or its corresponding office, including a public body that deals with the public debt;
- A central bank;
- A supranational organisation.

### Elective eligible counterparties

A firm may treat a client as an elective eligible counterparty if:

1. The client is a business and:
  - a) Is a per se professional client (except for a client that is only a per se professional client because it is an institutional investor under **COBS 3.5.2R(5))(from 1.11.07)**; or
  - b) Requests such categorisation and is an elective professional client, but only in respect of the services or transactions for which it could be treated as a professional client; and
2. The firm has, in relation to MiFID business, obtained express confirmation from the prospective counterparty that it agrees to be treated as an eligible counterparty.

## 2.7 Mixed Business

If a firm conducts business for a client involving both MiFID and other regulated activities it must categorise that client in accordance with the MiFID categorisation.

For example, if a MiFID firm advises a client on whether to invest in a scheme or life policy. As the former is MiFID business and the latter is not, the MiFID category takes priority.

This does not apply if MiFID business is provided separately from other regulated activities. In this case the basis on which the activities will be performed, including differences in the categorisations that apply, should be made clear to the client.

## **2.8 Re-Categorisation of clients**

As noted under 2.2, a firm must allow a professional client or an eligible counterparty to request re-categorisation as a client that benefits from a higher degree of protection.

It is the responsibility of a professional client or eligible counterparty to ask for a higher level of protection when it deems it is unable to properly assess or manage the risks involved.

A firm may, either on its own initiative, or at the request of the client concerned treat a per se eligible counterparty as a professional or a retail client and a per se professional client as a retail client.

If the firm re-categorises the client, a written agreement is required. The agreement must specify the scope of the re-categorisation i.e. whether it applies to one or more particular service or transaction, to one or more types of product or transaction. Where a previous agreement is in place, firms should give regard to any contractual obligations that may already be in place.

If a client is re-categorised in this manner, this does not necessarily mean they will become an eligible complainant under DISP, as FOS will determine whether they have the right to complain.

Where an eligible market counterparty requests to be treated as a different category of client, but does not expressly request to be treated as a retail client, and the firm agrees to the change, then the firm must treat the client as a professional client.

## **2.9 Record Keeping**

A firm must implement appropriate written internal policies and procedures to categorise its clients. Firms may use the guidance within this manual to define their policies and procedures.

Firms must make a record of the standard form of each notice provided and each agreement entered into with their clients. This record must be made at the time the standard form is first used and retained for the relevant period (noted below) after the firm ceases to carry on business with clients who were provided with that form.

The firm's records must show the following information in relation to each client:

- a) The categorisation established for the client, including sufficient information to support that categorisation;
- b) Evidence of despatch to the client of any notice required, and if this notice differs from the standard form, a copy of the actual notice provided; and
- c) A copy of any agreement entered into with the client.

The relevant periods for retaining the records are as follows:

- a) Indefinitely in relation to a pension transfer, pension opt-out or FSAVC;
- b) At least 5 years, in relation to a life policy or pension contract;

- c) 5 years in relation to MiFID business; and
- d) 3 years in any other case.

If a firm provides the same form of notice, e.g. to all retail clients, it need not maintain a separate copy of it for each client, provided it keeps evidence of despatch of the notice to each client.

The provision of an approved version of the firm's Client Agreement Letter (TOB) will demonstrate the categorisation of a customer as a retail client.

If you wish to re-categorise any of your clients, and treat them as either an elective professional client or an elective eligible counterparty, you should seek approval from Compliance.

## **2.10 Mortgage and General Insurance Firms**

The changes to client categorisation apply to investment firms.

The current categories for mortgage and general insurance clients remain unchanged.

Mortgage clients are not categorised by the FCA.

General Insurance clients –

Consumer and commercial customers.

A consumer is an individual who is acting for purposes that are outside his trade, business or profession.

A commercial customer is a customer who is not a consumer.



## **Market Abuse**

<b>Chapter 3</b>	<b>Market Abuse</b>
3.1	Overview
3.2	Firm's Procedures
3.3	Staff Responsibilities and Procedures



## **Chapter 3.1 – Market Abuse**

### **Overview - What is Market Abuse?**

Legislation set out within the Financial Services and Markets Act 2000 is designed to ensure integrity within the financial markets. Market Abuse is about the behaviour of an individual, or individuals, when executing trades on a prescribed market (exchange). The following are types of behaviours that equate to Market Abuse;

- Insider Dealing
- Disclosing Inside Information
- Accepting or effecting orders that give rise to a suspicion of Market Abuse (an example of this is where it is designed to deceive the market)
- Knowingly provide false or misleading information that is relied upon by an individual to invest within a prescribed market or to regular uses of a market.

### **Insider Dealing**

An insider is any person who has inside information as a result of:

- i) membership of an administrative, management or supervisory body of an issuer of qualifying investments
- ii) a holding in the capital of an issuer of qualifying investments
- iii) having access to the information through the exercise of his or her employment, profession or duties
- iv) criminal activities
- v) any other means and which is known, or could reasonably be expected to be known, as inside information

### **Insider Information**

This is information of a precise nature that is not generally available and if available would likely have a significant effect on the price of the qualifying investment.

### **Responsibilities**

To deal with the responsibilities of Market Abuse, processes have been established within the firm to identify and act upon any instances or possible instances of abuse.

To further mitigate this NO instructions for investment within commodity derivatives will be accepted or discussed.

## **Chapter 3.2 – Firm’s Responsibilities**

Any activity carried out by the firm or its appointed representatives will ensure its behaviour is consistent with the requirements spelt out within the FSMA 2000 on Market Abuse. Should we become aware of any Suspicious Transactions through the arrangement or execution of an investment on a prescribed market where there is any suspicion of Market Abuse, the firm’s Compliance Officer will notify the Financial Conduct Authority with immediate effect.

Suspicious will be decided on a case-by-case basis and may be a one-off transaction or could result from a series of transactions that give rise to a suspicion. Notification to the FCA will confirm:

- a) a description of the transaction, including the type of order (such as limit order, market order or other characteristics of the order) and the type of trading market (such as block trade); and
- b) the reasons for suspicion that the transaction might constitute market abuse
- c) the means for identification of the persons on behalf of whom the transaction has been carried out, and of other persons involved in the relevant transaction
- d) the capacity in which the firm operates (such as for own account or on behalf of third parties);
- e) any other information which may have significance in reviewing the suspicious transaction

and will be sent to;

The Market Conduct Team  
The Financial Conduct Authority  
25 The North Colonnade  
Canary Wharf  
London  
E14 5HS

Or by e-mail to: [market.abuse@fca.org.uk](mailto:market.abuse@fca.org.uk)

Or by fax to: Market Conduct Team on 020 7066 4901

DETAILS OF ANY NOTIFICATIONS MADE WILL NOT BE INFORMED TO ANY OTHER PERSONS

A copy of all notifications must be held securely within the firm to evidence a history of events.

## **Chapter 3.3 – Staff Responsibilities and Procedures**

### **Personal Account Dealing**

#### **Definition**

Where any individual within the firm transacts, on his or her own account, in a designated investment.

#### **Exclusions**

- Government and public securities, e.g. Gilts
- Life policies
- Units within a regulated collective investment schemes, e.g. Unit Trust
- Discretionary transactions where the employee has had no prior awareness and where the firm has not exercised the discretion

#### **Application**

In essence, the rules on personal account transactions are to protect the interests of the consumer. For example, fact-finding discussions with a customer may reveal sensitive information about his/her employer; information, which could have a positive or detrimental affect on the employer’s share price. Any individual within the firm could use this to his or her advantage and may not, therefore, be acting in the interests of the customer. Furthermore, the customer could be in breach of ‘Insider

Dealing' rules as a result. Such conflicts are rare, however it is important that they are identified and that the firm always puts the client's interests first.

### **Approval**

All personal account transactions must be approved in advance, by Compliance. Under no circumstances may a personal account transaction be initiated without prior approval. Approval must be granted in writing.

### **Back-door Personal Account Transactions**

It is not permissible for any individual within the firm to procure any other person to enter into a personal account transaction with a view to circumventing. Furthermore, it is not permissible for any individual within the firm to communicate any information or opinion to any other person if he knows, or ought to know, that the other person will, as a result, enter into such a transaction, or procure any other person to do so.

### **Record-keeping**

Personal account transactions must be notified to Compliance using a 'request for personal account transaction approval form'.

The firm and its Appointed Representatives must retain all records, for a period of not less than three years from the date the individual ceases to be engaged by the firm.

Compliance will maintain a record of received approval forms.



## **Anti Money Laundering**

<b>Chapter 4</b>	<b>Anti Money Laundering and Combating the Financing of Terrorism</b>
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<b>4.9</b>	<b>Staff training</b>
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**THE PROCEDURES WITHIN THIS CHAPTER APPLY TO ALL FIRMS.**

- **SECTION 4.3 - CONTAINS SPECIFIC GUIDANCE FOR INSURANCE FIRMS**
- **SECTION 4.4 - CONTAINS SPECIFIC GUIDANCE FOR MORTGAGE FIRMS**
- **SECTIONS 4.5 & 4.6 - ARE RELEVANT TO IFA FIRMS AND, IN CERTAIN CIRCUMSTANCES, TO GI AND MORTGAGE FIRMS.**

**Regardless of any exemptions mentioned throughout this document**

**New Leaf Distribution requires that, in the first instance, all new clients regardless of the product being sold, or the size of the investments, premiums or loan amounts, are verified using the Call Credit online ID Verification system, prior to any applications being made.**

**Where a client cannot be verified electronically, or is matched to the Financial Sanctions List, or the Politically Exposed Persons List, the case must be referred to Compliance who will issue guidance on what happens next.**

#### **4.1 – Anti Money Laundering & Combating the Financing of Terrorism**

The UK Money Laundering Regulations 2003, repealed by UK Money Laundering Regulations 2007, Criminal Justice Act 1993 and subsequently the Financial Services and Markets Act 2000 places responsibility on financial institutions, such as Mortgage, General Insurance and Investment Intermediaries, in assisting the authorities in the prevention of money laundering.

The Proceeds of Crime Act 2002 (POCA) consolidated, updated and reformed the law to include any dealing in criminal property worldwide. The legislation covers all criminal property with no minimum threshold.

Specific obligations to combat terrorist financing were set out in the Terrorism Act 2000.

The FCA handbook, Systems & Controls (SYSC) Chapters 2 and 3, sets out particular requirements relating to senior management responsibilities for systems and controls, including specifically addressing the risk that the firm may be used to further financial crime.

This is an extremely important chapter of this manual and all individuals engaged by the firm must be fully conversant with their obligations under the current regulations.

General Insurance and Mortgage Firms are not covered by the Money Laundering Regulations, nor the provisions of SYSC specifically relating to money laundering. They are, however, subject to the general requirements of SYSC and have an obligation to have appropriate risk management systems and controls in place; including controls to counter the risk that the firm may be used to further financial crime. They are also subject to the Proceeds of Crime and the Terrorism Acts.

All GI and Mortgage Firms will therefore contact Compliance if they have any suspicions regarding any of their clients.

All firms should ensure they check the Financial Sanctions List for ALL CLIENTS to ensure they do not deal with any clients whose details have been included in the Financial Sanctions List. The list can be accessed here [http://www.hm-treasury.gov.uk/fin\\_sanctions\\_index.htm](http://www.hm-treasury.gov.uk/fin_sanctions_index.htm).

However, New Leaf Distribution provides all advisers with access to the Call Credit online ID verification system. Call Credit will automatically check clients against the Financial Sanctions List, and the Politically Exposed Persons List, amongst other databases.

##### **4.1.1 What is Money Laundering and the Financing of Terrorism**

Money Laundering basically means making “dirty” money “clean”, hence the name. In other words, it is a process by which established financial procedures are utilised to make money illegally acquired appear to have come from a legitimate source, e.g. Bank, Insurance Company or Building Society.

Crimes that generate large sums of money, which needs to be laundered, include drug trafficking, theft, terrorism, criminal deception, tax evasion, burglary, handling stolen goods, forgery, extortion and blackmail.

Money laundering can be split into three stages. These are as follows:

- **Placement:**

Aim of placement is to get the money out of cash and into the non-cash economy.

- **Layering:**

The main objective of layering is to confuse the audit trail by passing the money through many transactions.

- **Integration:**

Integration stage aims to move the money into the legitimate economy in such a way that no one suspects its origin.

#### 4.1.2 The Legal Position

The laws governing the responsibilities of financial institutions with regards to AML/CTF put a personal responsibility on **all** Intermediaries and their staff.

The following offences are punishable:

- **Tipping-off:** It is an offence for anyone to prejudice an investigation by informing the person who is the subject of suspicion, or any third party, that a disclosure has been made, or that the authorities are acting, or are proposing to act, in connection with an investigation into money laundering. If in doubt, report it.

The punishment for a “tipping-off” offence is a maximum of five years imprisonment or/and a fine.

- **Assistance:** Following the Criminal Justice Act 1993, it is considered an offence to assist anyone whom you know or suspect to be laundering money generated by any serious crime. In the case of terrorism, it is also an offence to assist anyone whom you **should** have known or suspected to be laundering money.

Such assistance is punishable on conviction by a maximum of 14 years imprisonment and/or a fine.

- **Failure to report:** It is an offence not to report the knowledge or suspicion of money laundering as soon as is reasonably practical after the information comes to your attention.

**Failure to report is punishable by a maximum of five years imprisonment and/or a fine.**

It is also a separate offence under the ML Regulations not to have systems and procedures in place to combat money laundering (regardless of whether or not money laundering actually takes place).

#### **4.1.3 Senior Managers' obligations in relation to AML/CTF**

- To identify, and manage effectively, the risks in their business;
- New Leaf Distribution has appointed a Money Laundering Reporting Officer (MLRO), who has overall responsibility for AML/CTF. The MLRO should have a sufficient level of seniority within the firm to allow him to carry out his function effectively.
- To introduce and apply procedures (including guidance and training) as specified by the Money Laundering regulations and the "Guidance Notes for the UK Financial Sector";
- Firms should be encouraging their staff to "think risk" and not simply use the guidance as a checklist of steps to take;
- To adopt a risk based approach to verifying client identity. Legislation requires Intermediaries to 'know' its clients in the sense that it is satisfied that the personal details (e.g., name and address) provided by the client are verified. An Intermediary must be happy with the identity of the client and the source of the funds for the transaction;
- The firms must collect sufficient information about customers and beneficial owners to be able to understand their client's needs and objectives and the source of the anticipated funds available for investment.
- The firm must put in place monitoring procedures to enable them to identify any AML/CTF activity for which their business could be used and to enable them to monitor clients' transactions and activity;
- To identify and report suspicious activity;
- All suspicions must be reported to the MLRO. If in doubt, report it! (See section "Reporting of Money Laundering Suspicions").

**When considering whether to take disciplinary action against an FCA regulated firm in respect of a breach of the relevant provisions of SYSC, the FCA will have regard to whether a firm has followed provisions in the relevant guidance (i.e. Joint Money Laundering Steering Group). Departures from this guidance, and the rationale for doing so should be documented.**

#### **4.1.4 Queries**

If any staff member has any queries regarding AML/CTF regulations in general or with specific suspicious cases, then they should refer to the MLRO in the first instance.

Any supervisor/manager wishing to seek advice on issues with regard to AML/CTF can also contact the Compliance or the New Leaf Distribution MLRO for advice.

#### **4.1.5 Money Laundering Reporting Officer**

The MLRO is responsible for receiving internal money laundering disclosures, deciding whether these should be reported to SOCA and, if appropriate, making such external reports.

The MLRO is responsible for oversight of the firm's compliance with the FCA's rules on systems and controls against money laundering. They should be able to monitor the day-to-day operation of the firm's AML/CTF policies and respond promptly to any reasonable request for information made by the FCA or law enforcement agency.



General Insurance and Mortgage Firms are subject to the provisions of the Proceeds of Crime Act and the Terrorism Act, and must have procedures in place to ensure that any suspicions are reported.

#### **4.1.6 Compliance Monitoring by the MLRO**

At least once per calendar year, the MLRO should prepare a Compliance Monitoring Report. The JMLSG have produced a template that may be used in the completion of the report. This is available on the following link:

<http://www.jmlsg.org.uk/other-helpful-material/article/mlro-annual-report>

- Assesses the operation and effectiveness of the firm's systems and controls to ensure that they manage the money laundering risk effectively.
- Indicates, in particular, the way in which new findings as a result of national and international findings on material deficiencies have been used during the year. Such findings will be published on the following websites:
  - <http://www.fca.org.uk/>
  - <http://www.fatf-gafi.org>
  - <http://www.jmlsg.org.uk>
- Details the number of reports made by staff.
- The firm's senior management should consider the report and necessary action should be taken to remedy deficiencies identified in a timely manner.

## **4.2 Money Laundering and the Risk Based Approach**

### **4.2.1 Risk Based Approach**

The JMLSG guidance clearly states that Senior Management must:

- Assess their business with regard to the risks inherent in the organisation;
- Identify the money laundering and terrorist financing risks that are relevant to their firm;
- Assess the risk presented by the firm's particular clients, products, delivery channels and geographical areas of operation;
- Design and implement controls to manage and mitigate these assessed risks;
- Monitor and improve the effective operation of these controls;
- Record appropriately what action has been taken and why.

The methods selected and implemented by Senior Management must be reviewed regularly (at least annually). Firms should document the reviews undertaken and any required amendments.

### **4.2.2 How should Senior Managers risk assess their business?**

Senior Managers should consider the following when carrying out a risk assessment of their business.

- The nature, scale and complexity of the firm's business;
- The diversity of its operations, including geographical diversity;
- Its client, product and activity profile;
- Its distribution channels;
- The volume and size of its transactions;
- The degree of risk associated with each area of its operations.

#### **4.3 General Insurance Firms**

General Insurance Firms are regulated by the FCA, but are not covered by the ML Regulations or the provisions of SYSC specifically relating to money laundering. However, they are subject to the general requirements of SYSC and must have appropriate risk management systems and controls in place. These must include controls to counter the risk that the firm may be used to further financial crime.

In order to allow the on going monitoring of the AML/CTF risk, within the business, each client should be risk assessed before any business is completed. The standard verification for all clients of a GI Firm will be through the use of the Call Credit online ID Verification system.

#### **4.4 Mortgage Firms**

Mortgage Firms are regulated by FCA, but are not covered by the ML Regulations or the provisions of SYSC specifically relating to money laundering. However, they are subject to the general requirements of SYSC and must have appropriate risk management systems and controls in place. These must include controls to counter the risk that the firm may be used to further financial crime.

Mortgage Firms should, therefore, carry out a risk assessment of the business undertaken within their firm. Specifically, the firm should have systems in place to ensure that they are aware of multiple mortgage applications being made by clients, or cases where clients are repaying mortgages early and where the source of funds is not easily established.

In order to allow the on going monitoring of the AML/CTF risk, within the business, each client should be risk assessed before any business is completed. The standard verification for clients of a GI Firm will be through the use of the Call Credit online ID Verification system.

The firm will undertake an initial assessment to establish the overall AML/CTF risk within the business. Most mortgages will be classified as low risk and the firm will carry out a risk assessment of their existing client bank to establish the standard monitoring processes to be used.

Although the firm is not required to carry out individual AML/CTF checks, in cases where providers have requested they carry out client identity checks, the evidence obtained should be recorded and retained on the client file. Depending on the Provider this could be by using the Call Credit online ID Verification system, or by obtaining paper based ID.

#### **4.5 Procedures**

The standard verification for all clients will be through the use of the Call Credit online ID Verification system.

See also Section 4.6.3 – Electronic Evidence for further guidance

There are likely to be three levels of risk category:-

#### **Low, Medium, High**

Firms will be required to place each client in to the relevant risk category. They will also be required to place the products sold by their company into the relevant category. The combination of client and product risk will determine the level of verification that is required for IFA firms and client risk will determine the level for GI and Mortgage firms.

## Identifying the client and/or the Beneficial Owners

The client will be the person with whom the business relationship will be established, or for whom the transaction would be carried out.

Firms will also be required to establish whether there is an underlying beneficial owner.

There are now three categories of beneficial owner:

The general definition covers individuals who ultimately control the client, or on whose behalf a transaction or activity is being conducted e.g. someone using a power of attorney for an aged parent. Firms should make appropriate enquiries to establish whether there is a beneficial owner where it appears that the client may be acting on behalf of someone else.

Persons who own or control more than 25% of a body corporate, other legal entities or a legal arrangement (such as a trust) should be identified, and risk-based and adequate measures are taken to verify their identities. Verification can be by way of public records, by asking their clients for relevant data or other means of obtaining the information.

### Politically Exposed Persons (PEP)

Individuals who have, or have had, a high political profile, or hold, or have held, public office, can pose a higher money laundering risk to firms as their position makes them vulnerable to corruption. This risk also extends to members of their immediate families and to known close associates. A Politically Exposed Person is defined as “an individual who is or has, at any time in the preceding year, been entrusted with prominent public functions”.

While PEP status does not incriminate individuals or entities, it may put a client into a higher risk category.

The Call Credit online ID verification system will report any names that match the PEP database. If this occurs please contact Compliance for further guidance.

See also Section 4.6.3 – Electronic Evidence for further guidance

**The new guidance provides more detail on the customer due diligence that is required, and splits the due diligence in to distinct areas - simplified due diligence, client due diligence and enhanced due diligence.**

#### 4.5.1 Client Due Diligence (CDD)

**There are several steps involved in carrying out Client Due Diligence.**

**The firm is required to identify clients and, where applicable, beneficial owners. It must then verify these identities. Information on the purpose and intended nature of the business relationship must also be obtained. The firm must then conduct ongoing monitoring of the business relationship.**

The aim of client due diligence is to identify the different types of client and to establish their identity. This includes both their name and address. It must be noted that failure to keep records of the verification process is considered a serious offence.

Any Intermediary who knowingly confirms a client's identity with incorrect verification details may be committing a **criminal offence**. This would include incorrect confirmation by an Intermediary that ID (e.g., Passport or driver's licence) had been seen when only a photocopy was actually looked at.

Verification should be kept and filed in a client's file along with the steps taken to check the client's identity or, if it was decided that no steps should be taken, the reasons for this action.

It must be noted that Client Identification must be kept for at least five years from the date of maturity or termination of a policy or mortgage.

Due diligence will be carried out in two distinct parts, verifying a client's identity and, where the risk-based assessment has highlighted a higher risk, additional information will need to be gathered to "know your client".

### **Occasional Transaction**

The previous term used of a "one-off" transaction has been amended to refer to an "occasional transaction" and this is subject to a monetary limit of Euros 15,000 or more. An occasional transaction means a transaction carried out other than in the course of a business relationship e.g. an isolated instruction to purchase share. This applies whether the transaction is carried out in a single operation or several operations that appear to be linked. This means that any occasional transaction over the amount of Euros 15,000 will require the client's identity to be verified.

## **4.6 Verifying Identity & Client Due Diligence**

### **4.6.1 Who is the client?**

A person who is a client has been accepted into a relationship and his identity must be appropriately verified. This verification must take place as soon as reasonably practicable after first contact between the firm and the client, and in general before the establishment of a business relationship or the carrying out of an occasional transaction.

### **4.6.2 Exemption from Identification Procedures – Simplified Due Diligence**

Previous regulations allowed a number of exemptions from the obligation to identify the client. These situations are now described as circumstances in which simplified due diligence may be applied. Simplified due diligence means not having to identify the client, or to verify the client's identity, or, where relevant, that of a beneficial owner, nor having to obtain information on the intended nature of the business relationship. It is still necessary to conduct ongoing monitoring of the business relationship.

The firm has chosen not to apply simplified due diligence to any of our clients, and therefore will carry out **Client Due Diligence** in all cases. Where a higher risk category has been identified, the firm will carry out **Enhanced Due Diligence**.

### **Enhanced Due Diligence**

The firm must apply EDD measures on a risk-sensitive basis in any situation that by its nature can present a higher risk of money laundering or terrorist financing. Where the firm establishes there is a higher risk they will obtain additional information about the client.

However, there are three specific areas where EDD must be applied under the new regulations:

- Where the client has not been physically present for identification purposes;
- In respect of a correspondent banking relationship;
- In respect of a business relationship or occasional transaction with a PEP

### **4.6.3 Format of Confirmation of identity**

Confirmation of identity can be obtained in either documentary or electronic format.

## **Beneficial Owner Verification**

The firm must take risk-based and adequate measures to satisfy itself that it knows who the beneficial owner is. They may make use of public records of beneficial owners, ask their customers for relevant data or obtain the information otherwise. There is no specific requirement to have regard to particular types of evidence. In lower risk situations it may be reasonable for the firm to be satisfied of the beneficial owner's identity based on information supplied by the client.

### **Documentary evidence**

Documentary evidence can take many forms with the broad hierarchy being documents issued by government departments and agencies; documents issued by other public bodies or local authorities; documents issued by other regulated firms in the financial services sector; documents issued by other firms subject to the ML regulations or to comparable legislation and those issued by other organisations. Firms should always consider which documents are more easily forged than others.

### **Electronic evidence**

Where firms choose to use an electronic data provider they must consider whether the information supplied by the data provider is considered to be sufficiently extensive, reliable and accurate.

In order to rely solely on an electronic check to provide satisfactory evidence, the provider must use data from multiple sources. An electronic check that accesses data from a single source (e.g. electoral roll) is not normally sufficient on its own to verify identity. Further information regarding electronic verification is available from [www.jmlsg.org.uk](http://www.jmlsg.org.uk).

**New Leaf Distribution requires that, in the first instance, all clients, regardless of the product type being sold or the size of the investment, premiums or loan amount, be verified using the Call Credit online ID Verification system.**

**A copy of the Call Credit Report must be kept on the client file.**

#### **4.6.4 Initial identity checks**

You are, therefore, required to verify the your clients' names **and** addresses, **and this must initially be undertaken electronically in all cases** (see above).

If the Call Credit check results in a 'Verified' outcome, no further ID verification of the client is required.

Where the Call Credit check results in a 'Refer' outcome or other warning, advisers **MUST** refer the case to Compliance for further guidance on what to do next, **BEFORE** any applications take place.

Should a Provider require 'paper' verification of Identity the following process (through to section 4.6.7 inclusive) must be adopted.

Identity (e.g. name) should be verified using the following sources:

#### **Standard identification**

Firms are required to obtain details of the client's full name, residential address and date of birth.

#### **Face-to-Face Clients**

**Government issued document with a photograph that includes full name and either residential address or date of birth**

- Current full signed passport
- Current UK/EU Photo driving licence
- Firearms certificate or shotgun licence
- National identity card (non UK nationals)
- identity card issued by the Electoral Office for Northern Ireland

**OR**

**Government issued documents (without a photograph) incorporating clients full name, plus a second document that incorporates full name and either; residential address or date of birth.**

The following supported by a second document:

- Valid old style full UK driving licence
- Housing Benefit, council tax benefit, tax credit
- Pension, educational or other grant

**Plus (address)**

- Current council tax demand letter or statement
- Current bank statements – not from internet
- Credit/debit card statements issued by UK or EU firm (not from internet)
- Utility bills –but not those printed from internet
- Home visit – recording date and time.
- Instrument of a court appointment – e.g. liquidator or grant of probate

**Non face-to-face clients (potentially a higher risk client)**

Verification as above, **plus**

- First payment to be carried out through an account in the client's name within the UK or EU
- Telephone contact with the client, prior to putting the policy on risk/completing the mortgage, on a home or business number
- Communicating with the client at an address that has been verified and requesting this to be returned
- Copy of any documentation to be certified by an appropriate person e.g. doctor or lawyer

**When paper based ID verification has been obtained (for whatever reason) copies of all verification documents must be retained on the client file.**

**Variation from the standard – higher risk product or client (or both) (EDD)**

If the risk assessment highlights a higher AML/CTF risk, because of the nature of the client, business location or because of the product features available, the firm will need to determine whether it should require additional identity information to be provided, and/or whether to verify additional aspects of identity.

**4.6.5 Source of funds as evidence**

Where AML/CTF risk in a product is considered to be at its lowest then source of funds can be used as evidence. A product that qualifies for using the source of funds as evidence must be unable to make payments direct to, or receive payments direct from, a third party. Cash

withdrawals should not be permitted, other than by the investors themselves, on a face-to-face basis, where identity can be confirmed.

This can take the form of a payment from a bank or building society account in the name of the client. The firm will need to detail why this form of identification is acceptable. It can only be used for products that cannot accept payments from or to third parties and that do not allow remote cash withdrawals. It can only be used if the firm has reasonable grounds to believe that the identity has been verified by the firm on which the payment has been drawn.

#### **4.6.6 Financially excluded clients**

Each firm should have a procedure in place to allow identity to be verified for financially excluded clients. Examples of these are noted below:-

**Clients in Care homes** – if the client is in receipt of a pension, an entitlement letter or a letter from Department of Work & Pensions confirming that person is in receipt of a pension, or a letter from the matron of a care home, would be sufficient.

**Students and young people** – a letter from college or university.

**Grandchildren** - Standard verification of adult plus verification of child, e.g. birth certificate or passport, NHS Medical card, Child Tax Credit Documentation.

The firm must document that the client is financially excluded and why they are not following the standard procedure.

**All of the documents should be recent or current, for example, less than three months old for a utility bill or twelve months old for a council tax demand.**

#### **4.6.7 Joint Life Cases**

When dealing with a joint mortgage or joint policy, 'existing live client' status has to be considered separately for each of the joint applicants. If only one of the clients is an 'existing live client' then the process of verifying the identity of the other must be considered as a separate matter.

Verifying the identity of two joint applicants may involve different means of identification. For example; if only one of them has a full UK driving licence, or if only one is present at a home visit. On the other hand, a source of identity in joint names, such as a joint passport or joint mortgage statement would often provide one source of identity for both clients in one document.

In husband and wife cases, both identities should be verified.

#### **4.6.8 Verification of Corporate Identities**

The firm's objective must be to know who has control over the funds. The judgement on whose identity to verify will be made following a risk based approach.

When the applicant is a corporate entity particular care is required with regard to verifying the legal existence and/or the beneficial owners. A beneficial owner is an individual either owning or controlling more than 25% of body corporate or partnerships (or at least 25% of trusts), or otherwise owning or controlling the customer. These individuals must be identified and risk-based and adequate measures must be taken to verify their identities.

A company search should be conducted to ensure that the applicant company is not in the process of being, or has not been, dissolved, terminated or struck-off.

Where the applicant for business is an unquoted company or a partnership and none of the directors/partners are already known, one or more of the principal directors/partners should be identified. The following documents should be obtained:

### **Standard Evidence**

The firm should obtain the following in relation to the corporate client concerned:

- Full name
- Registered number
- Registered office in country of incorporation
- Business address

**PLUS**, for private companies

- Names of all directors (or equivalent)
- Names of beneficial owners holding over 25%

This can be evidenced using any of the following methods -

- Search of the relevant company register
- Confirmation of the company's listing on a regulated market
- Copy of the certificate of incorporation/trade or equivalent

Where the client is a higher risk company, e.g. smaller opaque entities or those in less transparent jurisdictions, further verification and/or monitoring may be required.

### **Private Companies**

Where private companies are well-known, reputable organisations, with a long history in their industries and substantial public information about them, the standard evidence may be sufficient to meet the firm's obligations.

Where there is less of an industry profile or less independent means of verification of the client entity, firms should consider the money laundering or terrorist financing risk and decide whether to validate the identity of individual directors, whose identity should be verified in accordance with the guidance for personal clients.

There is guidance available on the forms of verification for various other entities including; charities, churches and trusts from the Joint Money Laundering Steering Group website at [www.jmlsg.org.uk](http://www.jmlsg.org.uk)

#### **4.6.9 Timescale for Verification Requirements**

Although it is possible to process business immediately provided action is being taken as to the verification of identity, in reality, most providers/lenders will not accept an application unless they have received confirmation that the intermediary has carried out AML/CTF identity checks. In cases where an application has been accepted without confirmation that these checks have been carried out, every effort should be made to complete the verification before settlement of a mortgage takes place or before issue of policy documents. If settlement has occurred prior to verifying identity, verification must still be completed.

If satisfactory evidence of identity has not been obtained in a reasonable time scale, the firm must discontinue any regulated activity it is conducting and bring to an end any understanding it has reached unless, in either case, the MLRO has informed the National Crime Agency (NCA).



'Reasonable time' should be determined in view of all circumstances, such as the geographical location of all parties concerned.

**New Leaf Distribution requires that ALL forms of ID verification must take place BEFORE any applications of new business are made.**

## **General**

**Once the identity of a client has been satisfactorily verified there is no obligation to re-verify. However, as risk dictates, firms are advised to take steps to ensure that they hold appropriate up-to-date information on their clients. This also corresponds with the firm's Data Protection requirements.**

**Firms could include, within their terms of business or otherwise, a clause which would advise the client, at outset, that they may withhold any proceeds of sale or delay any transfer of investments to the client until the necessary evidence of identity has been obtained.**

### **4.6.10 Normal payment methods**

In the case of sole application, the account in which the cheque or Direct Debit Instruction is drawn can either be the client's own account (in sole name) or a joint account if this corresponds to a normal domestic arrangement between the client and another member of the same family or household. The same principles apply for joint life application or joint investment.

### **4.6.11 Unusual payment methods**

If, in exceptional circumstances, payment is made by other means, such as cash, non European Union Bank, Building Society cheque without pre-printed name, or a third party cheque, the Intermediary must be satisfied that the source of funds is not suspicious. In ensuring this, the Intermediary must question the client as to why the payment is not being made by the more usual means of a personal EU bank cheque or Direct Debit Instruction and record the reason on the Client Identification Form. Furthermore, the suspicion should be reported to the Money Laundering Reporting Officer, who will decide whether further information is required before the case is completed.

When dealing with Building Society cheques not pre-printed with the client's name, the Intermediary must see the passbook for the account from which the client says the funds are being drawn or, alternatively, a letter of confirmation from the building society. The name of the building society, the name(s) in which the account is held and the account number must be recorded on the Client Identification Form.

**[If the client is not named as an account holder, the paragraph below applies].**

Payment by means of a cheque drawn on the account of a third party will normally be treated as suspicious unless a client has a clearly legitimate reason and can specify the precise source of the funds. Consequently, this form of payment must be discouraged in order to minimise the number of cases reported to the MLRO.

If the payment method is changed, you may still feel it necessary to report your suspicion, particularly if the transaction is later cancelled.

In areas, such as Key-Man insurance, it would often be normal rather than "unusual" for the source of funds to be from a company bank in the UK rather than from an individual's personal bank account. In this instance, the procedure taken would be the same as for an individual paying premiums in the normal way by UK or other EU personal cheque or direct debit instruction (unless there is any reason to doubt the authenticity of the company or proposed transaction.)

With regard to individual business outwith the Key Man Sector, we are adopting the practice of needing to view some identification where the source of funds is “unusual”.

Regardless of whether a full primary and secondary source of identity has been seen, if there is any suspicion about identity in a case where payment is made by an unusual source, it is strongly recommended that you approach the MLRO.

Where documents are used to evidence the source of funds, original documents should be requested. Where possible, copies of documents relied upon, should be obtained and submitted with the ‘Money Laundering Suspicion Report’.

#### **4.6.12 Payment records**

Electronic payment instruction messages must hold full information regarding:

- Name
- Address
- Account number of the original sender
- Account number of the ultimate beneficiary of the fund.

The records of electronic payments and messages should be treated in the same way as any other record and should be kept for a minimum of five years from cessation of the relationship

#### **4.6.13 Multiple Relationships and reliance on third parties**

Where a client enters into a relationship with a product or service provider to purchase a product or services, with the active involvement of an intermediary, both the product/service provider and the intermediary, have an obligation to identify the client.

The product/service provider will normally accept confirmation of the client’s identity from the intermediary.

Where a client is introduced between different parts of the same group, only one confirmation of identification is required.

The relying firm retains responsibility for any failure to comply with a requirement of the Regulations, as this responsibility cannot be delegated.

The firm carrying out the AML verification must be a firm authorised either in the UK or in another EEA state, or a firm carrying on business in a non EEA state which is subject to requirements equivalent to those laid down in the Money Laundering Directive.

#### **4.6.14 Additional client information**

Where the firm has concluded that the standard evidence of identity is insufficient, further information will need to be recorded.

This information will be required as part of the risk assessment process to manage the firm’s AML/CTF risks effectively.

This will also provide a basis for monitoring client activity and transactions.

The additional information that can be collected is noted below –

- Nature and details of the business/occupation/employment
- Record of changes of address
- Expected source and origin of the funds to be used

- Initial and on-going source of wealth or income
- Copies of recent and current financial statements
- The various relationships between signatories and with underlying beneficial owners
- The anticipated level and nature of the activity that is to be undertaken throughout the relationship

The Firm is not expected to obtain additional information in respect of existing clients.

#### **4.6.15 Monitoring Client Activity for Unusual Activity**

The firm is required to put in place a system that will help it to identify any unusual activity during the course of a continuing relationship with their clients, e.g. a client who has always invested on a regular premium basis advises that he wants to invest a lump sum of £50,000 and then cancels within the cooling off period.

This should flag up transactions or activities for further examination. The reports should be reviewed promptly by the MLRO and appropriate action taken on the findings of any further examination

The files will be reviewed on a regular basis to highlight any unusual activity, but all staff should be vigilant in dealing with their clients, and if they become aware of unusual activity they should immediately refer this to the MLRO.

- Scrutiny of transactions undertaken throughout the course of the relationship (including, where necessary, the source of funds) to ensure that the transactions are consistent with the firm's knowledge of the client, his business and risk profile; and
- Ensuring that the documents, data or information held by the firm are kept up to date.

Consideration should be given to ALL of the information that has been gathered by the firm during the course of normal business and vetting processes. Consideration of all of this information may alter the risk profile of the client.

Example of unusual transactions are noted below –

- Unusual transaction – abnormal size or frequency or early surrender;
- The nature of a series of transactions e.g. a number of cash credits;
- Geographic destination or origin of a payment to, or from, a high risk country;
- The parties concerned, e.g. request to make a payment to, or from, a person on a 'sanctions list.'

#### **4.6.16 Record Keeping**

Firms must retain copies of the evidence they obtained of a client's identity, **for five years after the end of the client relationship**. This should take the form of a copy of the information collected and verification evidence obtained or information as to where a copy of the evidence of identity may be obtained.

#### **4.7 Reporting of Money Laundering suspicions**

- **All** suspicions, or where reasonable grounds exist for having knowledge or suspicion must be reported to the MLRO/NO.
- **Failure to report a suspicion is, without reasonable excuse, a disciplinary matter and may result in your position with the firm being terminated in addition to possible Criminal Proceedings.**

A central record of all reported suspicions, negated or not, must be maintained by the MLRO. This will meet a legislative requirement for record keeping, will provide evidence for the

authorities that suspicions have been properly considered and dealt with and will facilitate the on-going monitoring of adherence to company practice.

#### **4.7.1 What should be reported?**

All suspicions must be discussed with the MLRO. A report must be completed and submitted to the MLRO, unless the suspicion has arisen out of a simple misunderstanding of the circumstances.

Even if the MLRO decides that the suspicion is unfounded and need not be reported to the authorities, a report must still be submitted and should set out the reasons for the decision taken. This demonstrates that the person concerned acted in good faith in not reporting the case should the case subsequently prove to be a money laundering situation or terrorist funding activity.

#### **4.7.2 How to report a suspicion**

A "Money Laundering Suspicion Report" must be completed and sent, in a sealed envelope, to the MLRO.

The report must be accompanied by copies of supporting documentation relating to verification of identity and payment. However, because of the nature of money laundering concerns, the timeliness of reporting may often be of paramount importance. Therefore, a verbal report may be made, but must be followed up by a written report.

#### **4.7.3 How to complete the Report**

The report is designed to encapsulate all of the information required by the authorities.

The following items **must** be completed:

- ü Client's name
- ü Address (including postcode)
- ü Date of birth
- ü National insurance number

Under the section headed "Other Personal Data" include any reference information known that may enable the authorities to identify or locate the individual such as:

- ü UK driving licence number,
- ü Passport number and country of issue,
- ü Telephone and/or fax number(s),
- ü Employment details,
- ü Utility bill company name and reference number etc.

Such information may be available from verification details when the mortgage, policy or investment was effected.

Once the suspicion has been reported by the individual concerned, he/she will have completely fulfilled their obligation in the eyes of the law provided that they **do not inform anyone else outside of the normal upward reporting chain** (e.g., Adviser to MLRO; MLRO to the National Crime Agency).

### **REMEMBER**

**If a transaction, even if only proposed, raises any suspicion, then you must report it to the Money Laundering Reporting Officer. Once you have done so you have fulfilled your obligations under the law, provided**

**that you have not discussed your suspicion with anyone outwith your upward reporting chain.**

#### **4.8 Examples of suspicious activities**

Remember, a suspect could be a client, an agent or a member of staff. The following examples highlight situations that may give rise to suspicion of Money Laundering:

- § An intention to settle fees by cash;
- § A request by a client to enter into a mortgage contract(s) where, the source of the funds to repay the loan is unclear or not consistent with the client's apparent standing;
- § A proposal that has no discernible purpose and a reluctance to divulge a 'need';
- § A request to repay large amounts of outstanding capital;
- § Regular cash payments to repay outstanding capital;
- § An intention to pay fees by utilising a cheque drawn other than from the personal account of the proposer;
- § The money laundering regulations cover tax evasion. If a client states; that there is a difference between actual income and reported income then any suspicion that the additional funds are being used as a large deposit to purchase a property should be reported;
- § The client who is based in the UK and seeks to pay fees or repay capital by unusual means, which appears to be attempting to by-pass money laundering controls;
- § The client who is introduced by an overseas agent, an affiliate of another company that is based in a country where the production of drugs or drug trafficking may be prevalent. For example, South America or South East Asia;
- § Requests to transfer funds overseas and make payments with foreign currency;
- § Applications in different names but with common addresses;
- § The use of an address that is not the client's permanent address;
- § Several mortgage applications with common references, addresses, valuers, agents, solicitors, etc;
- § Mortgage applications with unusually high earning figures, especially if taking advantage of 'self-certification'.

**IF IN DOUBT REPORT IT**

#### **What Happens After I Report my Suspicions?**

The Money Laundering Reporting Officer will assess the information available.

#### 4.8.1 National Crime Agency (NCA) Procedures

- § Any suspicions of money laundering will be reported to NCA by the MLRO.
- § A standard format report will be used and is obtainable from NCA.  
<https://www.ukciu.gov.uk/saronline.aspx>.

Contact will be made with the National Crime Agency as necessary, but ONLY the MLRO will make contact.

#### 4.8.2 Existing Clients

There is no requirement to re-verify the identity of existing live clients unless there are any suspicions that money laundering may be taking place. It should be noted, that secondary identification should be sought **again** when a client moves address. Consequently, when arranging mortgages; obtain secondary identification for the new home. Firms may use the opportunity when carrying out new business for their existing clients to ensure they hold appropriate information.

#### 4.9 Staff Training

The firm must provide training to make staff aware of the risks of money laundering and terrorist financing, the relevant legislation and their obligations under that legislation.

Sufficient training should be given to enable them to recognise when a transaction is unusual or suspicious, or when they have reasonable grounds to know or suspect that money laundering or terrorist financing is taking place.

The NCA publishes a range of materials at [www.nationalcrimeagency.gov.uk](http://www.nationalcrimeagency.gov.uk) such as threat assessments and risk profiles, which can be incorporated into training materials.

This should be undertaken for all staff who are involved in transactions which could involve money laundering or terrorist financing.

The training must be provided in a rolling basis to ensure that, within a period of 24 months, it is given substantially to all staff. Testing should take place annually. Details should be recorded and confirmation of staff attendance and understanding retained.

All staff should be given a copy, or given access to, this document and should acknowledge receipt and understanding, in writing. Verification of understanding will be undertaken using a short written assessment, the content of which will be based upon this document.

Firms should keep comprehensive records to monitor who has been trained, when they received the training, the nature of the training and its effectiveness.

#### 4.10 CONTACT ADDRESSES FOR FURTHER INFORMATION

##### UK LAW ENFORCEMENT AGENCIES:

##### Money Laundering/Terrorist Financing/Proceeds of Crime Act

National Crime Agency 1-7 Old Queen Street London SW1H 9HP  Tel: 0370 496 7622	
City of London Police Money Laundering & Serious Crime Unit Wood Street Police Office 37 Wood Street London EC2P 2NQ  Tel: 0207 601 2222	

<b>FINANCIAL ACTION TASK FORCE</b>	<b>JOINT MONEY LAUNDERING STEERING GROUP (JMLSG)</b>
Secretariat 37 Bis Boulevard Suchet 75016 Paris France  Tel: 00 33 1 45 24 79 45	Pinnars Hall 105-108 Old Broad Street London EC2N 1EX  Tel: 0207 216 8863

<b>UK FINANCIAL SANCTIONS LEGISLATION</b>
Financial Sanctions Unit Bank of England Threadneedle Street London EC2R 8AH  Tel: 020 7601 4768/5811/4783/4607 Fax: 020 7601 4309

<b>UK FINANCIAL SECTOR FRAUD INTELLIGENCE UNITS</b>	
<p><b>British Bankers Association</b>  Fraud Prevention and Intelligence Unit  Pinner's Hall  105-108 Old Broad Street  London  EC2N 1EX</p> <p>Tel: 0207 216 8801</p>	<p><b>Association of British Insurers</b>  Fraud Unit  51 Gresham Street  London  EC2V 9HQ</p> <p>Tel: 0207 600 3333</p>
<p><b>Association for Payment Clearing Services</b>  Mercury House  Triton Court  14 Finsbury Square  London  EC2A 1BR</p> <p>Tel: 0207 711 6200</p>	<p><b>Credit Industry Fraud Avoidance</b>  173-175 Cleveland Street  London  W1P 5PE</p> <p>Tel: 0207 383 0210</p>
<p><b>Council of Mortgage Lenders</b> (mortgage fraud)  3 Savile Row  LONDON  W1X 1AF</p> <p>Tel: 0207 437 0075</p>	



**Staff Declaration**

I confirm I have read and understood my firm's Anti Money Laundering Procedures.

<b>Signature</b>	
<b>Date</b>	
<b>Print Name</b>	



## **Complaints**

<b>Chapter 5</b>	<b>Complaints.</b>
5.1	Receiving complaints
5.1.1	Notification to PI Insurers
5.2	Appropriate investigation of complaints
5.3	Responding to the complaint
5.4	Management controls and reporting
5.5	Co-operation with the Ombudsman
5.6	Record keeping
5.7	Disciplinary action
5.8	Complaints about other firms

## Chapter 5 – Complaint Handling

It is inevitable even within the best run organisations that there will be occasions when individual customers are not happy with the service provided. In such circumstances, customers complain.

We need to be clear as to what constitutes a complaint;

- Any situation where an individual has expressed dissatisfaction, whether justified or not, either orally, or in writing about the firm's provision of, or failure to provide, a financial service.

You should be vigilant to any complaint or, indeed potential complaint, involving the firm, which alleges;

- a breach of FCA Rules or guidance, or
- a failure to comply with any obligation arising under or by virtue of the Financial Services and Markets Act 2000, or
- negligence, a breach of a term of any customer agreement or any enactment or other rule of law which may be applicable to the business of the firm, or
- misrepresentation, bad faith or other malpractice.

Should you receive a complaint or suspect that a situation may give rise to a complaint, you must notify the Compliance Officer immediately, who will deal with the complaint in accordance with the firm's **Complaint Handling Procedure**.

You should not initiate contact with the customer until the Compliance Officer has informed you, in writing, that it is permissible to do so.

All staff should be provided with a copy of the **Complaint Handling Procedure** and should acknowledge, in writing, that the content has been read and understood.

All complaints received must be immediately notified to the Compliance Officer.

Firms must not charge a fee for providing written details of its internal complaints procedures and must ensure that a complaint may be made free of charge.

### 5.1 Receiving Complaints

Complaints may be received by any reasonable means, by letter, telephone, e-mail, fax or in person.

All complaints should be investigated competently, diligently and impartially.

Details of the Complaint should be recorded within a Complaint Register, which will include the following headings:

- Date Received
- Customer Name
- Category (see 5.4)
- Adviser
- Date Resolved
- Outcome

These procedures need not be followed if the complaint has been resolved by close of business on the business day following its receipt or if it is MiFID business from an eligible client who is not a retail client, as this applies to retail clients only for MiFID business.

A written acknowledgement should be issued to the complainant within a reasonable timescale when you receive a complaint. We would recommend this is within 5 business days. The Name and Job Title of the individual with responsibility for handling the complaint

should be included within the letter. For the purposes of the firm, the Compliance Officer will be responsible for dealing with all complaints.

A copy of the firm's **Complaint Handling Procedures** should be included with

The firm's acknowledgement letter –

If the firm is able to issue its final response within five business days of receipt of the complaint, it may combine its acknowledgement with the final response.

## 5.1 Notification to PI Insurers

Most PI policies contain a condition stating that *claims and circumstances which may give rise to a claim* must be notified **immediately** in writing to the insurers. Any complaint implying a failure in any professional duty as an Intermediary needs to be notified, however, if the complaint does not suggest you have failed within your professional duty or in any other way which would lead to a claim (such as matters relating to administrative or service matters), may not need to be notified. Under these circumstances, New Leaf would need to take a view on each complaint as soon as it is made as to whether it represents a *claim* or *circumstance* that needs to be notified. Therefore you must notify the Compliance Officer immediately

If underwriters are not notified as soon as a complaint is made, or as soon as you are aware of a matter that could give rise to a complaint, it may prejudice your position under the policy.

Once a *claim* or *circumstance* has been notified, most PI policies allow the insurers to control the conduct of the matter, and therefore all correspondence to the client needs to be pre-approved by the insurers. The exception to this may be the initial letter acknowledging the complaint.

The above information represents the general guidelines surrounding PI policies however insurers may have different conditions and it is therefore important that the firm is aware of the conditions surrounding their own policy.

## 5.2 Appropriate Investigation of Complaints

The firm needs to identify a senior individual to take overall responsibility for complaints handling. This person should be someone who already undertakes a governing function within the role. For example, a CF1 (Director) or CF4 (Partner). You are not required to formally notify the FCA of the individual nominated but this information should be provided to them, upon request.

Complaints must be investigated by an individual with sufficient competence who, where appropriate, was not directly involved in the matter giving rise to the complaint.

The firm should aim to resolve any complaints as quickly as possible.

The Compliance Officer will examine, in detail, all documentation in relation to the complaint and will interview, where appropriate, any staff with an involvement in the content of the complaint. Communication with any connected parties will be fully recorded on the complaint file, as will copies of all correspondence.

Firms are required to obtain additional information as necessary to investigate the complaint fully.

The client must be kept informed thereafter about the progress of the complaint.

If we are unable to complete our enquiry within eight weeks of receipt of the complaint, the Compliance Officer will advise the complainant:

1. the reason for the delay
2. when the firm anticipates being able to make further contact.

This information must be provided within eight weeks of receipt of the complaint.

Complaints should be resolved at the earliest possible opportunity, minimising the number of unresolved complaints that need to be referred to the Financial Ombudsman Service.

By the end of eight weeks after receipt of a complaint, the Compliance Officer must issue a final response or if the Compliance Officer is not in a position to issue a final response, a letter explaining to the complainant;

1. the reason for the continued delay
2. when the firm anticipates being able to provide a final response
3. the right of the complainant to refer the matter to the Financial Ombudsman Service and enclosing a copy of the Financial Ombudsman Service's leaflet

### **5.3 Responding to the Complaint**

Once all enquiries are complete, the Compliance Officer will draft a response for issue to the Complainant.

The response is sent 'recorded delivery' to the complainant, within five business days of the completion of the investigation. The response will include details of the outcome of the investigation and the nature and terms of any settlement.

Where redress is appropriate, the firm must provide the complainant with fair compensation for any acts or omissions for which it was responsible. The Compliance Officer has the necessary authority to offer redress.

The firm will comply with redress offers accepted by the complainant. Redress need not be financial and could include, for example; an apology. The final response letter should explain the complainant's right to refer the matter to the Financial Ombudsman Service and enclose a copy of the Financial Ombudsman Service's leaflet. The response should indicate that the complainant has a six-month timescale to refer the matter to the Ombudsman, which commences on the date that the final response is issued by the firm.

The result of the investigation is entered into the Complaint Register.

A complaint may be deemed closed;

- The firm's investigation has been completed and a Final Decision Letter has been issued to the complainant; or
- Where the complainant has indicated in writing acceptance of the firm's earlier response, where appropriate

### **5.4 Management controls and reporting**

With the introduction of Electronic Reporting, the firm must submit an electronic complaints report, twice per year, to the FCA in relation to complaints.

The Compliance Officer will review all complaints on a six monthly basis to ensure that complaints have been handled speedily, fairly and consistently. Appropriate action should be taken in the event of any trends or systemic problems as well as any specific problem identified by a complainant. Please note that a breakdown of complaints closed by the firm within 4 weeks or less, within 4 to 8 weeks and more than 8 weeks are required.

Firms will need to have in place processes on how you might carry out root cause analysis of complaints and take account of ombudsman decisions and other guidance. The FCA does not

expect a small firm that handles very few complaints to have elaborate or expensive systems in place to take into account the FOS's decisions. The FCA will expect firms to ascertain the scope and severity of the consumer detriment that might have arisen and consider whether the firm should proactively undertake a redress or remediation exercise which may include contacting customers who have not complained.

Complaints will be given the following categories:

1. Overcharging or incorrect charges
2. Delays
3. Other Administration errors
4. Misleading advice
5. Failure to carry out instructions
6. Poor customer service
7. Misleading advertising or product information
8. Disputes over sums or amounts payable
9. Switching/Churning
10. Breach of customer agreement or contract
11. Arrears handling
12. Other

### **5.5 Co-operation with the Ombudsman**

The firm will co-operate at all times with the requirements of the Financial Ombudsman Service.

If the case is referred to the Ombudsman, the Compliance Officer will submit a report along with any supporting documentation.

### **5.6 Record Keeping**

A firm, including, in the case of MiFID business, a branch of a UK firm in another EEA state, must keep a record of each complaint received and the measures taken for its resolution, and retain that record for:

1. at least 5 years where the complaint relates to MiFID business; and
2. three years for all other complaints.

We would recommend that complaint files should be retained indefinitely.

### **5.7 Disciplinary action**

There may be instances where the conduct of a particular advisor may require more direct action and disciplinary action may be required. The following procedure will be followed by the firm:

1. Training/Development need identified.
2. Appropriate coaching undertaken and documented.

*In the event of a continued shortfall in performance;*

3. Formal letter issued by the Compliance Officer stating the nature and extent of the firm's concerns and requiring the remedial action to resolve the situation is taken within fourteen days.

*If matters have not improved;*

4. Final letter issued by the Compliance Officer stating the matter must be resolved within a further seven days.

*If the matter remains outstanding;*

Adviser should no longer be permitted to advise customers in connection with their investment, mortgage and/or insurance requirements.

## **5.8 Complaints about other firms**

Where a complaint is received in respect of advice provided by another firm, it is important that the customer is treated fairly. In such circumstances, the complaint should be acknowledged promptly. The firm should be satisfied that the other firm may be responsible, the customer should be provided with the contact details of the firm concerned in the form of a final response letter.

Additionally, a copy of the complaint should be forwarded to the firm concerned requesting that they make contact with the complainant.

Where there may be a joint liability in relation to a complaint, the procedure discussed above should be followed as well as the firm responding to part of the complaint that is relevant to it in accordance with this Chapter of the manual.

Such complaints should be recorded within the firm's complaint register.

Where the firm receives a referred complaint, it should deal with the complaint in accordance with the firm's standard complaints procedure with time limits applying from the date on which the firm receives the complaint referral.





## **Recruitment of New Advisers**

<b>Chapter 6</b>	<b>Recruitment of New Advisers</b>
6.1	Recruitment of new advisers
6.1.1	Reference Checks
6.1.2	Credit Checks
6.1.3	CCJs/Bankruptcy
6.1.4	Qualifications
6.1.5	Completing Fit and Proper Checks
6.1.6	Reference Request for a Previous Employee
6.2	Ongoing Fit and Proper Checks

It is well known that the UK Financial Services Industry is one of the best regulated industries in the world.

As part of any robust regulatory regime, the competence, experience and integrity of individuals involved in the provision of the financial services must be of the highest standard.

In order to achieve this aim, the FCA requires that individual's fitness and propriety is checked prior to recruitment and on an ongoing basis. Firms intending to recruit an Independent Financial Adviser, Financial Adviser Mortgage Adviser or General Insurance Adviser, must as part of their recruitment procedures take into account the knowledge and skills of the individual, in relation to the knowledge and skills required for the role. Firms must also take reasonable steps to obtain sufficient information about the individual's previous relevant activities and training, while taking reasonable steps to obtain information about the knowledge and skills of the individual, including appropriate examination passes.

The FCA expects a firm to take into consideration the individual's honesty, integrity, reputation, competence, capability and financial soundness when recruiting an adviser. To help determine whether the individual meets these standards a firm should undertake fit and proper checks, prior to the individual commencing in the advisory role.

As an FCA authorised firm we are responsible for ensuring that any new individual joining the network in an advisory role has a due and diligent enquiry carried out on them, to ensure they are fit and proper.

In the case of a new employee or an employee new to an activity, a firm should determine the employee's training needs, before the employee engages in any activities. The training should take into account the knowledge and skills necessary to fulfil the role, ensuring that the training remains effective and up to date.

Firms must not permit an employee to engage in an activity unless the employee has been assessed as competent or unless they are under appropriate supervision.

This chapter explores the general requirements for:

## **6.1 Recruitment of new advisers**

An individual looking to become an **Independent Financial Adviser or Financial Adviser** should complete, sign, and provide the following documentation, to enable us to conduct a due and diligent enquiry on them:

FCA paper based applications should no longer be used, however, we may use the paper version to prepare your application prior to completing the form on-line via the Online Notification system on the FCA website.

- § **Form A** – application to perform a controlled function
- § **New Leaf Distribution Application Form**
- § **Declaration Form**
- § **Certificates in Financial Advice**

An individual looking to become either a **Mortgage Adviser or General Insurance Adviser** should complete, sign, and provide the following documentation, to enable us to conduct a due and diligent enquiry on them:

- § **New Leaf Distribution Application Form**
- § **Declaration Form**
- § **Certificates in Mortgage / General Insurance**

These forms should be scrutinised by the Compliance Officer, to identify any conflicting / inaccurate information and to ensure that a full five year employment history including details on any unemployment,

studies i.e. attending school/college/university, as well as any details on being self-employed i.e. accountant and solicitor have been supplied. If the individual was last engaged as an adviser more than five years ago you will require the employment details for this period too.

### **6.1.1 Reference Checks**

In order for us to undertake a due and diligent enquiry, we will carry out reference checks, covering the last full five years and where necessary beyond this period, if the individual was last engaged as an adviser more than five years ago. References will be issued to all previous employers, benefit agencies, school/college/university, accountant and solicitor (for self-employed individuals) for the five-year period, to establish the information supplied by the individual is accurate.

For individuals that have attended school, college or university within the last five years, this should be investigated, to ensure the information supplied by the individual is correct, therefore we would issue a request to the appropriate body, asking for confirmation that the person attended there between the dates supplied on the individuals application form.

For individuals that were unemployed and claiming benefits, we will request confirmation from the benefits agency, to ensure the information stated by the individual is accurate. However if the individual says they were unemployed and not claiming benefits we will need to obtain further information to establish how they supported themselves during this time i.e. lived off their savings, supported by their partner, this information would also need to be noted within the individual's application form.

If the candidate has been self-employed within the last five years, we will not issue a reference request, but will establish whom their Accountant and Solicitor was for that period and issue a reference request to them. The reference request letter we send to the Accountant and Solicitor is different to the normal reference, as they relate to the company and the person. If you find the individual did not have an Accountant or Solicitor when self-employed we will ask the individual to supply us with evidence that they owned the company, this could be for example, a Companies House Certificate or company bank statement.

For companies where the individual has been employed within the last five years, reference requests will be issued to the employer. If we find that one of the employers was an appointed representative firm then a reference request will also be issued to the main firm, as the main firm will tend to hold the information relating to complaints, debts as well as training and competence. If we find a company the individual worked for is no longer in operation or the company refused to send a reference request to us then it would be advisable to get the individual to provide you with evidence that they worked for the company, this could be a contract of employment, wage slip etc.

### **6.1.2 Credit Checks**

We will require a credit report on the individual. We might find from the credit report that they are not linked to the address details they supplied us with, if this is the case we will ask the individual to supply us with a recent utility bill or bank statement with their name and the appropriate address on it, as evidence of them residing there. Sometimes when credit reports are carried out an undeclared address may be shown, if this happens we will ask the individual if they have been linked to any other properties over the last few years, it does not necessarily have to be a property they owned, they could have rented it from someone, it could be a buy to let or a business address, we need to try and establish the address from them without giving the address away to them.

### **6.1.2 CCJ'S/Bankruptcy**

The credit report may also show County Court Judgments (CCJ's) as well as Bankruptcy, if this is the case we will want an explanation from the individual as to how these occurred and what they plan to do to rectify the matter, as this information would need to be noted within the application form. At this point we might decide we no longer wish the individual to join the network.

### **6.1.3 Qualifications**

Individuals should supply us with their certificates in financial advice or equivalent. These certificates should be copied and certified by Compliance as 'true copies' then placed within the individuals recruitment file, as a record of their qualifications.

### **6.1.4 Completing Fit & Proper Checks**

Once we have received all necessary references and information we will check there are no gaps in the individual's employment history, if there are we will obtain an explanation from the individual as to why, so this information can be stated in the application form. If we find any of the references state the individual has a debt of £1000 or more we will find out from the firm whether a repayment plan has been put in place to repay the debt. If the answer is no, we will ask the individual to set one up. Having outstanding debts could produce a conflict of interest between advising clients on the most suitable products and the level of commission/fees paid to them. This could result in complaints being made against then adviser for mis-selling.

When we have completed all fit and proper checks and are satisfied with the individual's capabilities we can then submit their application to the FCA (please note the Application Form for Mortgage & General Insurance Advisers is not submitted to the FCA, as Mortgage & General Insurance Adviser are not directly authorised). For individuals where their Form A is submitted to the FCA please note they cannot undertake any regulated activities until they receive written authorisation that they have been authorised.

### **6.1.5 Reference request for a previous Employee**

Should you receive a reference request for a previous employee it is a regulatory requirement that we respond to the request, confirming the individual's employment status and period of employment. All reference requests should be forwarded on to Compliance who will deal with the response.

## **6.2 Ongoing Fit & Proper checks**

On an ongoing basis firms we need to be satisfied as to the fitness of our advisers, and this will be assessed on an ongoing basis by reference to the Training and Competence procedures.

In addition, an annual credit report will be undertaken in respect of each adviser using a commercial credit-referencing agency.



## **Training & Competence**

<b>Chapter 7</b>	<b>Training &amp; Competence</b>
7.1	Introduction
7.2	Persons affected
7.3	Training & Competence Officer
7.4	Recruitment
7.5	Trainee Adviser
7.6	Experienced Adviser
7.7	Formal Assessment
7.7.1	Assessment of skills
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<b>7.8</b>	<b>Training</b>
7.8.1	Initial training
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<b>7.9</b>	<b>Competence</b>
7.9.1	Attaining & Maintaining Competence
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7.9.4	Exemptions from appropriate exam requirements
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<b>7.12</b>	<b>Key Performance Indicators (KPI)</b>
<b>7.13</b>	<b>Supervisors</b>
<b>7.14</b>	<b>Conclusion</b>
TC Appendix 1	Activities & Products to which TC applies
TC Appendix 2	TC Territorial Scope
TC Appendix 3	Circumstances in which TC does not apply

## **Chapter 7 – Training and Competence**

### **7.1 Introduction**

The FCA Training and Competence (T & C) Rules were introduced to uplift the professional status of all advisers within the industry. We fully endorse and are committed to the development of knowledge and skills levels. The purpose of this chapter is to outline the standards and commitments that will be followed by firms, advisers and employees.

The purpose of this chapter is to provide detailed explanation of the FCA's Training & Competence requirements.

The competent employees rule is the main handbook requirement relating to the competence of employees. The purpose of the TC sourcebook is to support the FCA's supervisory function by supplementing the competent employees rule for retail activities.

Competence means having the skills, knowledge and expertise needed to discharge the responsibilities of an employee's role. This includes achieving a good standard of ethical behaviour.

### **7.2 Persons Affected**

- All approved Independent Financial Advisers
- All approved Financial Advisers
- All approved Mortgage Advisers
- All approved General Insurance Advisers (Personal Lines & Commercial Insurance Brokers)
- Compliance Officers
- Training and Competence Officers

### **7.3 Training and Competence Officer**

The Training and Competence Officer will oversee the operation of T & C within the firm and within its Appointed Representative Firms, where relevant. The Training and Competence Officer will review T & C Arrangements at least annually in accordance with the Training & Competence Plan.

### **7.4 Recruitment**

Where the firm intends to recruit an adviser who will, or intends to, provide advice, we will:

- Take into account the knowledge and skills of the individual in relation to the knowledge and skills required for the particular role.
- Obtain sufficient information about the individual's previous activities and training.
- Comply with the Fit & Proper Procedures contained within this Procedural Manual.

Potential new advisers will be classified as either Trainee Advisers or Experienced Advisers depending upon their level of academic achievement and relevant work experience. This information will be obtained from evidence of academic achievement, references and employment history.

### **7.5 Trainee Adviser**

Trainee Advisers are individuals with little or no relevant Industry experience.

They are defined as someone who holds:



1. Academic qualifications as required by the FCA from time to time, and;
2. Minimal relevant experience.

## **7.6 Experienced Adviser**

An individual who is to perform the above role must have:

1. Academic qualifications as required by the FCA from time to time, and;
2. Relevant experience immediately prior to joining.

The T & C Officer must be satisfied that the individual can demonstrate the knowledge and skills commensurate with classification as an Experienced Adviser.

It is envisaged, therefore, that any new recruits will be engaged on the basis that they have adequate relevant experience and knowledge.

The T & C Officer has discretion as to the appointment of individuals.

## **7.7 Formal Assessment**

In addition to the information obtained through the recruitment process, each potential new Adviser should be assessed to establish the content of subsequent training to ensure that assistance provided is appropriate to the needs of the individual. The assessment will be undertaken by an approved Supervisor and will take place upon completion of the initial training referred to in 7.8.

### **7.7.1 Assessment of Skills**

This assessment is intended to establish the individual's current skills level in relation to:

- Listening, questioning and evaluative skills applied to the 'know your client' fact-finding process.
- Ability to establish client's financial needs in relation to their requirements and propose possible solutions whilst considering the client's personal objectives, circumstances and attitude to risk.
- Oral written and explanatory skills.
- Judgement as to when the client's needs require more expert or wider consultation, perhaps by referral to a Solicitor.

The Assessment will comprise a Role-Play and will be observed and assessed by a Supervisor using an objective observation aid.

The Individual will be asked to conduct a client fact find interview and present both orally and in writing, possible generic solutions to the customer. It is not envisaged that the individual will be required to fully research suitable product providers at this stage.

This process will establish any gaps in the individual's skills and will enable appropriate training to be structured.

A satisfactory assessment is one where the individual achieves, at least, 100% in respect of all mandatory areas (highlighted within the objective observation aid).

### **7.7.2 Anti-Money Laundering Assessment**

All individuals will be expected to complete a multiple-choice test concerning Anti Money-Laundering requirements.

A satisfactory assessment is one where the individual achieves, at least, a 70% score.

### **7.7.3 Training Needs Analysis**

Each Adviser will be required to complete a 'Training Needs Analysis' form which documents the adviser's perceived standard of knowledge/competence within a number of product and skill areas.

The form will also identify the relevance each area has to the business of the firm and the activities that will be undertaken by the adviser.

By completing the above processes, the firm will have a sound understanding of the individual's abilities and short-comings, thereby enabling the construction of an appropriate training plan, which meets the needs of the adviser, and enabling progression of the adviser to competent status.

**Two re-sits will be permitted in respect of any activity where the adviser has fallen short of the prescribed standards. If the adviser cannot meet the prescribed standards, the matter will be subject to consideration by the firm's Training and Competence Officer.**

## **7.8 Training**

### **7.8.1 Initial Training**

All individuals will be provided with initial training intended to familiarise them with the network's environment as well as provide training on the following areas:

- Products frequently used
- Services provided
- Procedures
- Advisory Process
- Administration procedures
- Product training

This training will be on job and will be overseen by the individual's nominated supervisor and will be conducted in the first days of being formally appointed.

### **7.8.2 Individual Training Plan**

Once the above processes have been completed satisfactorily, the adviser may conduct 'supervised' activity and will be supported with a view to achieving Competent Adviser Status.

Ongoing training to achieve Competent Adviser status could comprise training and assessment of the practical application of knowledge and skills to the Advisory Process and could include the following elements:

- Observation of Competent Individuals during preparation, client interviews, researching suitable products and the oral and written presentation of solutions.
- Individual could conduct accompanied visits with support provided by Supervisor.
- Individual could conduct accompanied visits with supervisor observing.
- Fact Find and Suitability Letter completion that will be assessed by the supervisor.
- Continuing Professional Development (CDP) Activity.
- Training needs will be identified, appropriate training will be arranged and the Supervisor will ensure that the individual transfers this learning to the job.

- Formal one to one meetings will take place with the Supervisor at a frequency that is relevant to the needs of the individual.
- Client File Reviews

### **7.8.3 Identifying Training Needs**

Training Needs may be identified using various methods, including:

- KPI Data
- Compliance Reporting (including Adviser Audit reports)
- One to One meetings with approved Supervisor

Potential weaknesses may be identified from time to time. It is the responsibility of the individual, with the help and guidance of the Supervisor, to ensure appropriate action is taken.

A Development Action Plan may be agreed upon to formalise any remedial training/coaching.

This should be recorded within the Individual's Continuing Professional Development records.

### **7.8.4 Training Methods**

Although, not exhaustive, training may be provided through the following methods:

- One to One Supervisor meetings
- Product Provider/Lender Seminars
- Self Learning
- Financial Press
- In-House training activities
- Discussion Groups
- Insurance Company Consultant visits

## **7.9 Competence**

### **7.9.1 Attaining & Maintaining Competence**

We may not assess an employee as competent to carry on an activity in TC appendix 1 until the employee has demonstrated the necessary competence to do so, and has, if required, passed each module of an appropriate examination.

We will not allow an employee to carry on an activity in TC appendix 1 without appropriate supervision.

We will ensure that employees are appropriately supervised at all times. The level and intensity of that supervision will be significantly greater in the period before we have assessed the employee as competent, rather than after. We have clear procedures relating to the specific point at which the employee is assessed as competent in order to demonstrate when and why a reduced level of supervision may be considered appropriate.

At all stages we will consider the level of relevant experience of an employee when determining the level of supervision required.

## **7.9.2 Supervisors**

The firm will ensure that those supervising employees carrying on an activity in TC appendix 1 have the necessary coaching and assessment skills as well as technical knowledge to act as a competent supervisor. We will consider whether it is appropriate to require those supervising employees not assessed as competent to pass an appropriate examination as well, except where the employee is giving advice on packaged products.

Where an employee is giving advice on packaged products to retail clients, and has not been assessed as competent to do so, we must ensure that the individual supervising and assessing that employee has passed an appropriate exam.

## **7.9.3 Examination requirements before starting activities**

We will ensure that an employee does not carry on an activity in TC appendix 1 (other than an overseeing activity) for which there is an examination requirement without first passing the relevant regulatory module of an appropriate exam.

We will also ensure that an employee does not carry on any of the following activities without first passing each module of an appropriate examination:

- 1) Advising and dealing activities in TC appendix 1
- 2) The activity of a broker fund adviser
- 3) Advising on syndicate participation on Lloyd's; or
- 4) The activity of a pension transfer specialist

Where there is an examination requirement, we may wish to impose limits on the time we allow employees to pass an appropriate exam, or place limits on the number of times the examination can be taken. This is at our discretion, however if an excessive time is taken to pass an exam we need to be able to justify the reason for this.

## **7.9.4 Exemptions from appropriate exam requirements**

If we are satisfied that an employee meets the conditions in this rule then the requirements to have passed each module of an appropriate exam will only apply if that employee is carrying on one of the activities specified in this rule.

The conditions are that we are satisfied that an employee:

- (a) has at least three years' up to date relevant experience in the activity in question obtained while employed outside the UK
- (b) has not previously been required to comply fully with the relevant exam requirements
- (c) has passed the relevant regulatory module of an appropriate examination

## **7.9.5 Selecting an appropriate exam**

In ensuring that an examination is appropriate, the firm should select an appropriate exam from the list of examinations maintained by the Financial Services Skills Council.

## **7.10 Training Needs**

We will ensure that the employees training needs are assessed at the outset and at regular intervals (including if their role changes). Appropriate training and support will be provided to ensure that any relevant training needs are satisfied. We will also review at regular intervals the quality and effectiveness of such training.

## **7.11 Continuing Supervision**

Upon achieving competence, advisers must still receive appropriate supervision at a level, which is appropriate to these individuals.

It is suggested that support includes the following areas:

- Regular monitoring of the standard and quality of the Adviser's work through reference to KPI's and other quality controls completed as part of the network's compliance reporting.
- Sampling of Fact Finds and advice given via Suitability Letters to ensure the network's standards are maintained.
  - A Supervisor should review 10% of each adviser's business written. This level is subject to review by Compliance.
  - 100% of each trainee adviser's business written until recommended as competent by a supervisor, in respect of Client File Reviews.
- Regular inspection of the Advisers' Continued Professional Development Records. The records will be reviewed at least quarterly, and the Supervisor will complete an assessment record.
- Observed Interviews or Role-Plays, where appropriate.
- Adviser Audits

#### **7.11.1 Maintaining Competence and Continued Professional Development**

We have appropriate arrangements to ensure that individuals who have been assessed as competent maintain this status.

Activities undertaken will be appropriate to the needs of the individual and are detailed within the individual Training Plan. The approved Supervisor will monitor the balance of activity. The activities to be undertaken include the following however this will be amended to suit the individual adviser:

<b>ACTIVITY</b>	<b>VERIFICATION CYCLE</b>
Generic Knowledge Assessment	Annual basis
Firm Procedural Assessment	Annual basis
One to One Meetings	Quarterly
CPD Assessment	Quarterly
File Assessments	Monthly
KPI Monitoring reports	Quarterly (two year rolling basis)
Skills Assessment Role-play or observed client meeting	Annual basis
Adviser Audits	Quarterly

All advisers must maintain a CPD file.

The objective of CPD is to improve and maintain the standards of the adviser's knowledge and skills and the application of that knowledge and skills. The emphasis should be on quality and not quantity.

Advisers CPD records will be reviewed as part of the Adviser Audits.

All Advisers must maintain an appropriate record of CPD activity relevant to the needs of their own individual development needs. It is imperative that each adviser achieves a satisfactory level of appropriate CPD in any calendar year.

### 7.11.2 Recording Activity

Activity is split into three areas:

1. Organisational Development
2. Individual Skills Development
3. Individual Knowledge Development

Activity should be appropriate to the individual's needs; therefore, Personal Development Plans should be in place, where relevant. It is not expected that all activity will necessarily relate to a specific Plan, however, there is little value in undertaking activities from which no benefit will be derived. The Development Plan allows advisers to structure activity in an appropriate and relevant manner.

### 7.11.3 Other Matters

Any Development Action Plans, records of one to one meetings with Supervisors, results of Assessments/Exams, evidence of activity, etc should also be retained within a CPD File which will be held on the New Leaf Adviser Centre.

### 7.11.4 Conclusion

CPD activity is an extremely important area and with some effort all advisers should achieve the level of professional standing that will benefit themselves, and importantly, our customers.

## 7.12 Key Performance Indicators (KPI)

**Advisers are required to understand the process of performance assessment completed through the firm's Key Performance Indicator System (KPI) which cover:**

**This monitoring plan will be amended as applicable for each individual adviser.**

Key Performance Indicator	Standard
<b>Persistency and Cancellations (where appropriate)</b>	The level of lapsed business as compared to in force business should not be less than 90% on an ongoing basis. Statutory Cancellations should not exceed 10% of business written.
<b>Quality of Client Files</b>	No more than 20% of Client File assessments should fail to meet the required standards in any six-monthly period.
<b>Quality of Advice</b>	Compliance will investigate all cases where the quality of advice is doubted.
<b>Range of Advice (business mix)</b>	Each adviser must demonstrate an adequate mix of product type sold.
<b>Spread of Lender/Product Provider</b>	Generally, no more than 20% of product sales should be to one Product Provider without adequate explanation. Recognition is given to the fact that many

	insurance contracts are price driven.
<b>Complaints</b>	Compliance will investigate all Complaints. No more than one upheld complaint should be received in respect of each adviser in any calendar year.
<b>Training Performance via Continued Professional Development record</b>	Each individual should achieve an adequate level of quality/appropriate CPD activity in any calendar year.
<b>Skills Assessments via objective assessment</b>	100% of all mandatory areas and, at least, 70% of all non-mandatory areas must be achieved in respect of any objective assessment.

### **7.13 Supervisors**

All advisers are supported by one of our Supervisors.

The firm's Training & Competence Officer must deem all Supervisors as Competent.

All Supervisors should have received appropriate training and be able to demonstrate previous Supervisory experience. Appropriate training may have been provided prior to joining the firm, although the Supervisor should have a firm grasp of procedures and standards within the firm and consequently will be required to attend a firm approved Supervisor Skills training course.

- **7.14 Conclusion**

In summary, our aim is to ensure that its representatives are appropriately qualified and experienced to provide consumers with appropriate advice.

The Training & Competence arrangements ensure that regular assessment of knowledge and skills is undertaken and that all advisers are appropriately supervised.

## TC Appendix 1

Activities and Products/Sectors to which TC applies subject to TC Appendices 2 & 3		
Activity	Products/ Sectors	Is there an appropriate examination requirement?
Designated investment business carried on for a retail customer		
Providing basic advice	1. Stakeholder products excluding a deposit-based stakeholder product	No
Advising	2. Securities which are not stakeholder pension schemes or broker funds 3. Derivatives 4. packaged products which are not broker funds 5. Friendly Societies life policies where the employee is not reasonably expected to receive remuneration of greater than £1000 a year in respect of such sales. 6. Friendly Society tax-exempt policies 7. Long-term care insurance contracts 8. Investments in the course of corporate finance business 9. Advising on syndicate participation at Lloyd's.	Yes
Undertaking the activity in column 2	10. Broker fund adviser 11. Pension transfer specialist	Yes
Advising & dealing	12. Securities which are not stakeholder pension schemes or broker funds 13. Derivatives	Yes
Managing	14. Investments	Yes
Overseeing on a day-to-day basis	15. operating a collective investment scheme or undertaking the activities of a trustee or depositary of a collective investment scheme 16. Safeguarding and administering investments or holding client money. 17. Administrative functions in relation to managing investments 18. Administrative functions in relation to effecting or carrying out contracts of insurance, which are life policies 19. Administrative functions in relation to the operation of	Yes



	stakeholder pension schemes	
Regulated mortgage activity and reversion activity carried on for a customer		
Advising	<b>20.</b> Regulated mortgage contracts for a non-business purpose <b>21.</b> Equity Release transactions	Yes
Designing scripted questions for non-advised sales	<b>22.</b> Equity release transactions	Yes
Overseeing non-advised sales on a day-to-day basis	<b>23.</b> Equity release transactions	Yes
Non-investment insurance business carried on for a consumer		
Advising	<b>24.</b> Non-investment insurance contracts	No

Notes:

1. In the appendix the heading and types of business specified in the headings are to be read in conjunction with the paragraphs appearing beneath them.
2. Thus, for example, paragraph 24, under the final heading, refers only to advice on non-investment insurance contracts given to a consumer

## TC Appendix 2

TC's Territorial Scope subject to the limitation in TC Appendix 3			
	UK Domestic firm	Incoming EEA firm	Overseas firm (other than an incoming EEA firm)
MiFID business and equivalent third county business	<p>TC applies in respect of employees who carry on activities from an establishment maintained by the firm (or its appointed representative) in the United Kingdom</p> <p>And</p> <p>TC also applies insofar as an activity is carried on from an establishment maintained by the firm (or its appointed representative or, where applicable, its tied agent) in, and within the territory of, another EEA state.</p>	TC does not apply	TC does not apply
Regulated Mortgage activity and reversion activity	<p>TC applies if the customer is resident in the UK at the time the regulated mortgage activity or reversion activity is carried out</p> <p>And</p> <p>TC also applies if the customer is resident in another EEA state (at the time that the activity is carried on) but only if the activity is carried on from an establishment maintained by the firm or its appointed representative in the United Kingdom</p>	Same as for UK domestic firm	Same as for UK domestic firm
Any other activity in Appendix 1	TC applies in respect of employees who carry on these activities from an establishment maintained by the firms (or its appointed representative) in the United Kingdom	TC applies in respect of its employees who carry on activities from an establishment maintained by the firm (or its appointed representative) in the United Kingdom	TC applies in respect of its employees who carry on activities from an establishment maintained by the firm (or its appointed representative) in the United Kingdom

	And  TC also applies in respect of employees who carry on activities with or for a client in the United Kingdom		
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### **TC appendix 3**

Circumstances in which TC does not apply	
Type for firm / activity	Application
Incoming EEA firm	This sourcebook does not apply where responsibility for any matter it covers is reserved by a European community instrument to the firm's Home State Regulator
Incoming Treaty Firm	This sourcebook does not apply where responsibility for any matter it covers is reserved by a European community instrument to the firm's Home State Regulator
UCITS qualifier	This sourcebook only applies where it is relevant to the manner in which a firm communicates or approves a financial
Authorised professional firm	TC does not apply with respect to its non-mainstream regulated activities
Incoming ECA provider	TC does not apply to an incoming ECA provider acting as such



## **Other Legislation**

<b>Chapter 8</b>	<b>Other Legislation</b>
<b>8.1</b>	Consumer Credit Act 1974
<b>8.2</b>	Data Protection Act 1998
<b>8.3</b>	Employers' Liability (Compulsory Insurance) Act 1969
<b>8.4</b>	Power of Attorney
<b>8.5</b>	Notifiable Events
<b>8.6</b>	Client Money

## Chapter 8 – Other Considerations

### 8.1 Consumer Credit Act 2006 – rewrite this

Whilst a number of arrangements may not be regulated insofar as the Rules of the FCA are concerned, many will still fall under the auspices of the Consumer Credit Act 2006, e.g. unsecured lending and second charge loans; debt counselling; arranging credit for others. You should, therefore, act appropriately in all instances and maintain a Consumer Credit Licence with the appropriate permissions.

Under the terms of the Consumer Credit Act 2006, the firm and each Appointed Representative firm must be in possession of a current Consumer Credit Licence. All Self-employed Persons should also hold a separate Consumer Credit Licence in their own name. As a minimum, authorisation categories C - Credit Brokerage and D1 - Debt Adjusting must be included and should be displayed at your Business Premises.

From 6<sup>th</sup> April 2008 most new licences will be issued on an indefinite basis with the firm being subject to an initial charge and then a periodic maintenance charge. Charges also apply to mid-term variations of an existing licence.

Also from April 2008 the Office of Fair Trading has introduced new licensing categories for credit information services and debt administration.

Whilst there are a number of activities which require a consumer credit licence, the main categories are as follows:

Category C- Credit Brokerage. This will be required for all types of mortgages except a 'first charge mortgage' as this is regulated by the FCA. ie Second charge mortgages, unsecured loans.

Category D1- Debt Adjusting. Required if you help people with their debt problems by taking over their debts or negotiating on their behalf. ie Where debts arise under the consumer credit or hire purchase agreements.

Category E- Debt counselling. Required if you want to advise individuals about how to discharge specific debts. ie where the debts arise under consumer credit or hire purchase.

Although these are the main categories where firms may require a licence, other categories may apply depending on the type of business you do. The OFT recommends firms only apply for licence categories that it actively provides or intends to provide services in that category. If you are in any doubt as to whether any activity of your firm requires a licence you should seek confirmation from the OFT.

The OFT have also introduced new rules for checking the competency of individuals holding certain categories of licence. All firms selecting Category C-Credit Brokerage will be required to complete the Credit Risk Profile Form and firms selecting Category D1-Debt Adjusting or Category E-Debt Counselling will be required to complete the Credit Competence Plan Form when completing their CCL application form.

**Application forms for a Consumer Credit Licence can be obtained from OFT, Craven House, 40 Uxbridge Road, Ealing, London, W5 2BS, or by telephoning 020 7211 8608 or by e-mail [enquiries@oft.gov.uk](mailto:enquiries@oft.gov.uk) with your full address. You can also obtain details of the process for obtaining a licence and guidance about the requirements of the Act together with details of fees on the OFT website at [www.oft.gov.uk](http://www.oft.gov.uk).**

Check that you have a licence in your correct name; that it has the correct permissions and that it remains valid.

Your clients will also not have the right to refer any CCA complaints to the Financial Ombudsman Service if they are unhappy with the service provided.

As of April 2008, there will be no financial limit on the level of consumer credit agreements being brought into regulation.

Please also note that licences cannot be transferred. Therefore, if you change the legal status of your company (eg from a sole trader to a limited company) you will need to apply for a new licence.

Please be aware the OFT have the ability to impose financial penalties of up to £50,000 where a requirement has not been complied with.

## **8.2 Data Protection Act 1998**

All advisers and firms are required to be registered under the Data Protection Act 1998 for Purpose PO38 - *other Financial Services including broking and dealing*.

The Data Protection Act requires you to ensure any data you hold on individuals is kept up to date, and is not retained for any longer than is necessary to undertake business with your client.

If you receive a "subject access request" you are obliged to respond to the client within 40 calendar days. You have the right to charge the client £10 for this request, and the 40 day period will commence from receipt of all the information required to meet the request, including receipt of the £10.

There are some cases where you are not required to provide information, and an example of these exemptions is noted below:

- § Crime prevention and detection;
- § Negotiations with the requester;
- § Management forecasts;
- § Confidential references given by you (but not ones given to you);
- § Information used for research, historical or statistical purposes; and
- § Information covered by legal professional privilege.

**Please ensure that you have an up to date Data Protection Licence. An application can be obtained from the Data Protection Registrar online:**

**[http://www.ico.gov.uk/Home/what\\_we\\_cover/data\\_protection/notification.aspx](http://www.ico.gov.uk/Home/what_we_cover/data_protection/notification.aspx)**

**The Data Protection Licence is renewable annually.**

## **8.3 Employers' Liability (Compulsory Insurance) Act 1969**

Where appropriate, a current unlimited Employers' Liability Policy must be displayed at your Business Premises.

You can obtain Employers' Liability Insurance from most good Insurance Brokers.

It is an offence to employ individuals without holding current Employers' Liability Insurance.

## **8.4 Power of Attorney**

You should not act as Power of Attorney for any of your customers. By accepting Power of Attorney it may empower you to handle client money or assets.

Should you have any doubts as to any particular situation, refer the matter to the Compliance Officer.

## **8.5 Notifiable Events**

We are obliged to notify the FCA of certain events within prescribed time limits.



To enable the firm to comply with such obligations, it is important that you notify the Compliance Officer immediately of the following circumstances;

- § Where you have been responsible or are aware of a material breach of the rules of the FCA or the rules or requirements of another regulator.
- § Where you are experiencing financial difficulties.
- § Where you have become subject to investigation by any regulator, including the FCA, Inland Revenue or Police.
- § Where, in your name, a petition has been presented for a bankruptcy order, a composition with your creditors or an award for sequestration.
- § Where you have been disqualified from acting as a director.
- § Where you have been charged with, or convicted of any criminal offence (other than a motoring offence unless resulting in disqualification from driving).

## **8.6 Client Money – FCA permission to hold client money**

### **New Leaf Distribution does not hold PCA permissions to hold client money.**

All customer cheques should be made payable to the appropriate Product Provider, Surveyor or Lender as appropriate and **not** to the firm.

Any cheques payable to the firm, **except** where due in respect of Fees payable to the Firm by the client, should be immediately returned to the customer.



## **Bribery Act 2011 Procedures**

<b>Chapter 10</b>	<b>Bribery Act 2011 Procedures</b>
10.1	Background
10.2	Application
10.3	Approval
10.4	Back door personal account transactions
10.5	Record-keeping

## Chapter 10 – Bribery Act Procedures 2011

### 10.1 Background

On 31 March 2011, the Ministry of Justice published its Guidance on the Bribery Act 2010. This act is set to come in to force with effect from 01 July 2011 and affects all commercial organisations not just Financial Services businesses.

In a nutshell any firm could be at risk of the corporate offence of failure to prevent bribery, and will therefore need to have in place “adequate procedures” designed to prevent bribery, which, under the Act, will afford a defence.

The Act is silent as to what ‘adequate’ procedures will look like but required the Government to provide guidance on the point. Following the publication of its draft guidance in September 2010, the Government came under increasing pressure for a review of the Act.

### 10.2 Application

The Bribery Act will not lead to a large number of prosecutions and will not outlaw corporate hospitality, the Government has said in long-awaited guidance on last year's Bribery Act.

The guidance also makes it clear that small companies could communicate their anti-bribery policies orally and still meet the requirements of the new law.

"Cases will be brought where they are in the public interest, which will require the personal agreement of the Director of Public Prosecutions or the Director of the Serious Fraud Office," said Justice Secretary Ken Clarke. "I do not expect a large number of prosecutions and certainly not for trivial cases."

The Act should not be used to stop companies from entertaining customers and contacts, the new rules said.

### 10.3 Approval

Any item or gift, which can be construed as having a monetary value, must be notified to Compliance within 7 days of receipt. (Appendix 1)

All gifts or items with a monetary value cannot be accepted without formal approval from Compliance. However, there are some items that do not require approval.

Items not requiring notification	Items requiring notification
Business Luncheon	Any Corporate Hospitality
Travel costs to cover attendance of a training course regarding a firm's products and services. (UK only)	Any gift or item such as Wine, Chocolates, Spirits although they are likely not to exceed the £100 they still need to be documented.
Attendance at industry dinner (ticket only)	Travel costs to cover attendance of a training course regarding a firm's products and services. (Outside UK)
Marketing Allowances where a tangible service can be defined.	Marketing Allowances where the payment cannot be accounted for against a tangible service.
	A donation to a charity nominated by a Third

	Party
	The offer of shares at a reduced cost
	A loan at favourable terms

#### **10.4 Back-door Transactions**

It is not permissible for any individual within the firm to procure any other person to enter into a transaction with a view to circumventing 10.3. Furthermore, it is not permissible for any individual within the firm to communicate any information or opinion to any other person if he knows, or ought to know, that the other person will, as a result, enter into such a transaction, or procure any other person to do so.

#### **10.5 Record-keeping**

All Gifts and inducements must be notified to Compliance using a 'request for approval form'.

Firms must retain all records for a period of not less than six years from the date the individual ceases to be engaged by the firm.

Compliance will maintain a record of received approval forms.

<b>NAME OF INDIVIDUAL</b> ..... <b>DATE</b> .....	
<b>DESCRIPTION OF GIFT OR ITEM</b> ..... ..... ..... ..... .....	
<b>PURPOSE OF GIFT OR ITEM IF KNOW</b> ..... ..... .....	
<b>COMPANY OFFERING GIFT OR ITEM</b> .....	
<b>APPROVED BY</b>	.....
<b>IF DECLINED PLEASE STATE REASON</b> ..... .....	