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Credit advertising

A guide to dually-regulated advertisements

OFFICE OF FAIR TRADING

FSA®

Contents

1. Introduction

The Financial Services Authority (FSA) and the Office of Fair Trading (OFT) have produced this guide to explain their respective responsibilities under the Financial Services and Markets Act (FSMA) and the Consumer Credit Act (CCA).

The purpose of this guide is to:

- help firms identify when an advertisement is regulated by both the FSA and the OFT, as well as the Local Authority Trading Standards Services (LATSS) and the Department of Enterprise, Trade and Investment in Northern Ireland (DETINI); and
- highlight key issues for firms whose advertising has to meet the requirements of both FSMA and CCA.

Usually, an advertisement will only need to comply with either FSMA or the CCA, but not both. Guidance on each act is available on the websites of the FSA and the OFT.

Important note: The two acts use different terminology. The CCA is based on an 'advertisement' (which may be part of a wider promotion) whereas FSMA is concerned with the broader idea of 'financial promotions'. However, for this guide, we use the term 'advertisement' throughout.

FSMA refers to 'intermediaries', this includes credit brokers referred to under the CCA.

2. How do I know which act applies?

A simple guide for assessing which act applies is shown in the flow diagrams below. See section 2.1 for definitions of 'enter into' and 'administer'.

Figure 1: Credit provider flow diagram

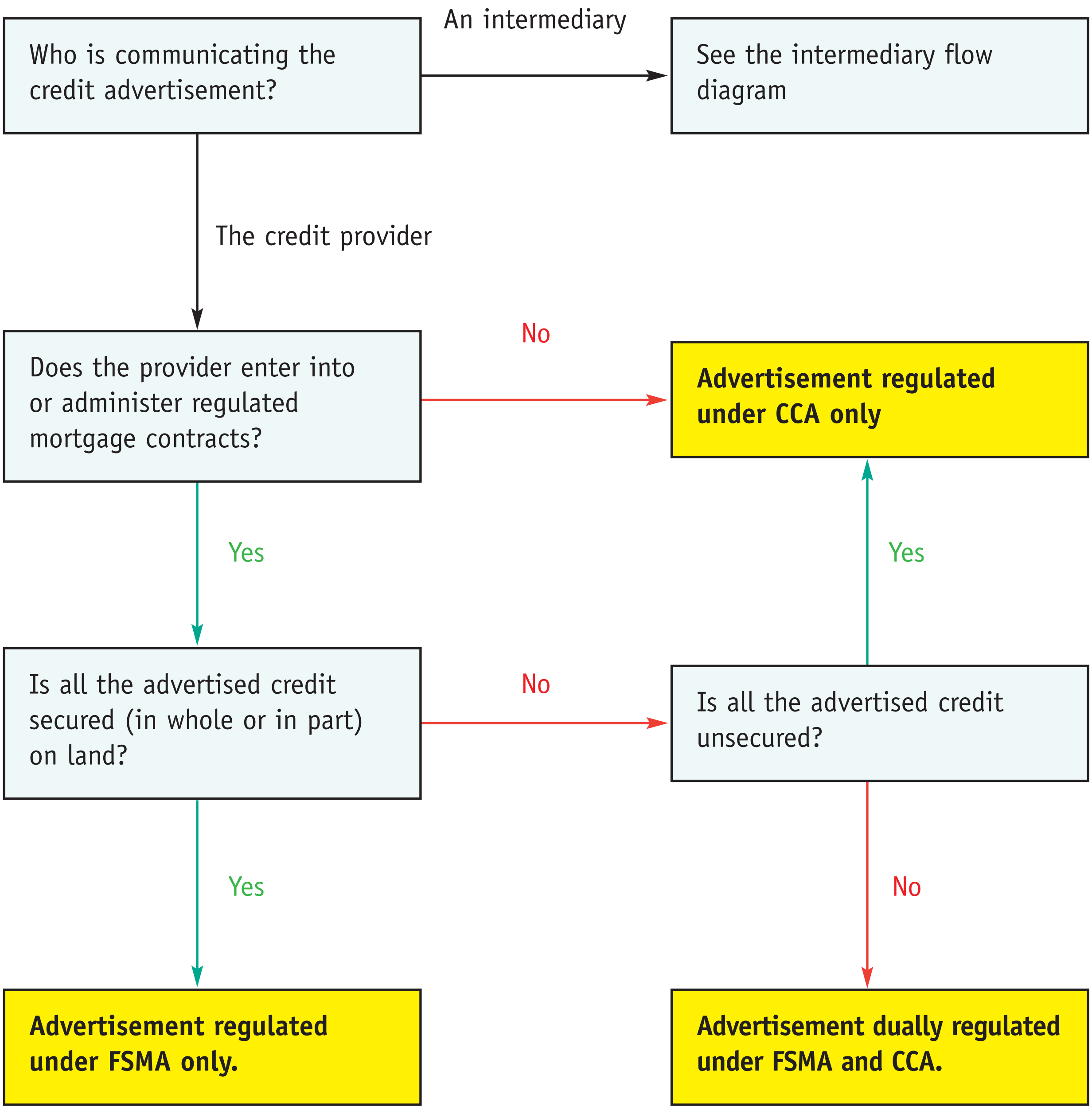
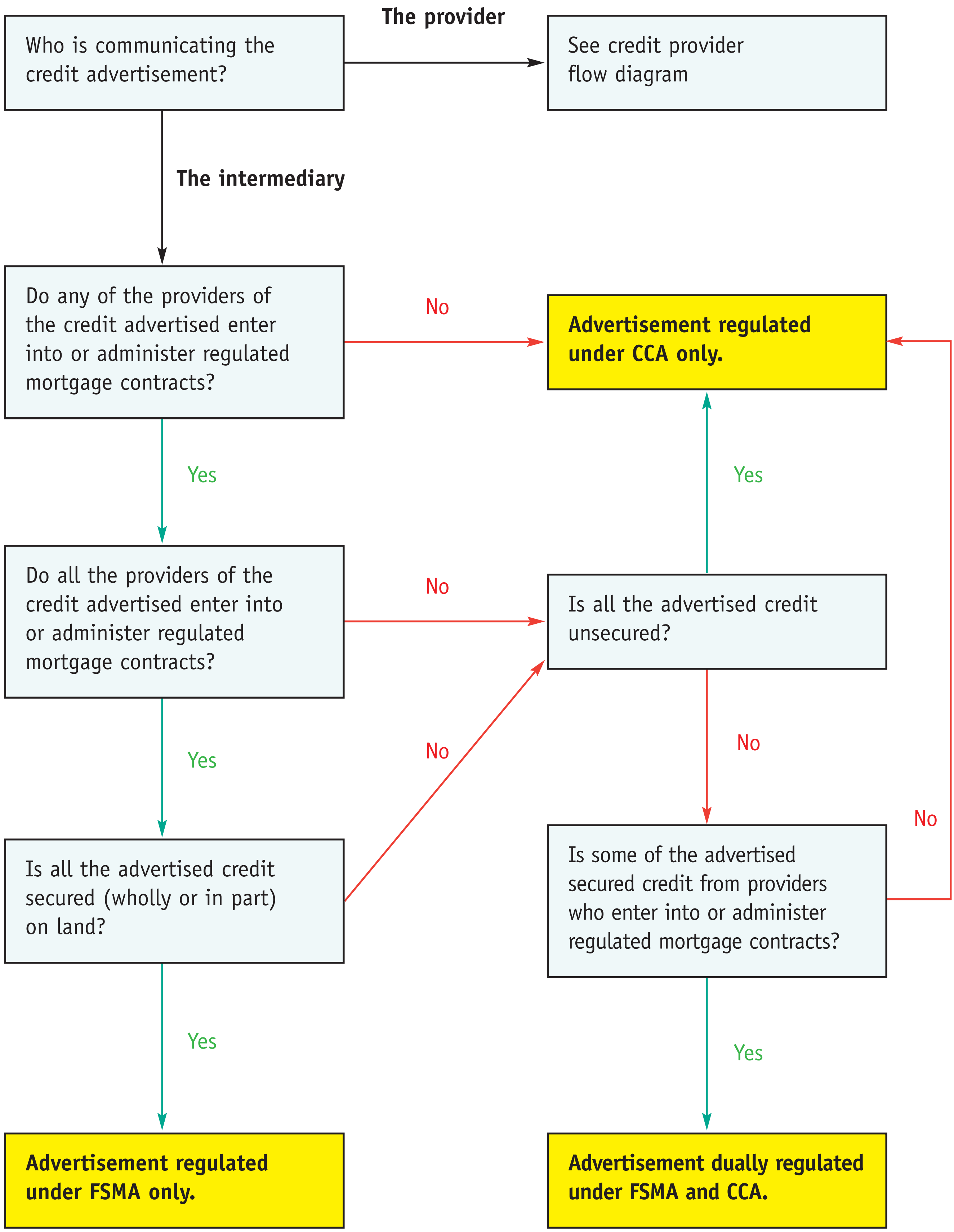


Figure 2: Intermediary flow diagram



2.1. Basic principles for deciding which regime applies

FSMA covers advertisements for 'qualifying credit':

(http://fsahandbook.info/FSA/html/handbook/Glossary/Q)

Qualifying credit is any loan from a lender who enters into, or administers, regulated mortgage contracts (RMCs) and where the borrower's obligation to repay is secured on land (in whole or in part). So advertisements for second charge mortgages could come under FSMA even if the agreements for such mortgages come under the CCA.

'Enters into a regulated mortgage contract' means lending money under a contract regulated by the FSA.

'Administering a regulated mortgage contract' means:

- notifying the borrower of any matters they are entitled to be informed of under the contract, such as changes in interest rates or payments due; and/or
- taking any necessary steps to collect or recover payments due under the contract from the borrower.

Having or exercising a right to enforce the contract (or to require others to enforce it) does not in itself constitute administering.

For credit providers: If the credit provider enters into or administers RMCs, then any advertisement by that lender for loans, where the borrower's obligation to repay is secured on land, will be regulated under FSMA and will be outside the CCA advertising regime.

For intermediaries: In order to decide which act applies for intermediary advertisements, the lenders providing the loans must be considered. If the advertisement relates to secured loans and all of the lenders enter into or administer RMCs, then the whole advertisement will come under FSMA. This is regardless of whether a lender is identified in the advertisement or whether the intermediary is authorised by the FSA.

Intermediaries may wish to check the FSA's register (http://www.fsa.gov.uk/Pages/register/) to see if the lender enters into or administers RMCs.

If none of the lenders enter into or administer RMCs, the advertisement will be regulated under the CCA.

If some of the lenders enter into or administer RMCs and some do not, the advertisement will be subject to both acts – providing that the advertisement relates to secured lending offered by one or more of these lenders.

The CCA applies to most consumer credit advertisements and advertisements by credit brokers, which advertise the services of the broker or of lenders they introduce clients to. The CCA will therefore apply to most advertisements that involve non-qualifying credit – for example, second-charge loans from lenders who do not enter into or administer RMCs or any form of unsecured credit such as personal loans or credit cards.

The CCA may also apply to advertisements for first charge loans, which are exempt from FSMA. An example would be an advertisement that is exempt because it is generic in nature, eg, one that does not identify the provider of the credit or anyone who advises on or arranges such credit (and does not refer to a particular credit product).

Important note: There are two key points to consider when deciding which act applies.

1) Does the lender enter into or administer RMCs?

2) Is the borrower's obligation to repay secured on land?

If the answer to both questions is yes, the advertisement will be regulated under FSMA. If the answer to both questions is no, the CCA will apply. In other cases, both may apply.

2.2. Definitions

What is qualifying credit?

Qualifying credit is the term used to define forms of secured credit that fall under the FSMA, where provided by a firm that enters into or administers RMCs. For a full definition of qualifying credit, please see the Glossary in the FSA's Handbook.

Qualifying credit includes:

- First-charge residential mortgages
- Second-charge loans
- Commercial loans
- Buy-to-let lending
- Loans secured on property overseas

For FSMA to apply, the lender must enter into or administer RMCs, and the loan must be secured (in whole or in part) on land. 'Land' here means any land, not just land in the UK.

What is an RMC?

For the full definition of an RMC, please see the Glossary in the FSA's Handbook.

The definition of qualifying credit does not include any form of unsecured credit such as personal loans or credit cards.

What does consumer credit mean?

Consumer credit includes a cash loan and any other form of financial accommodation, such as where the consumer has time to pay for goods or services. All consumer credit agreements are regulated under the CCA unless exempt (eg, because they are RMCs). Most second-charge mortgages are subject to the CCA, even if their advertising is subject to FSMA.

3. What are the key differences between the two acts?

3.1 The Annual Percentage Rate of Charge (APR)

Triggers

An APR is triggered under both acts if the advertisement contains certain information on price.

Under FSMA (see MCOB3) the APR requirement is triggered if the advertisement refers to any rate of charge, payment or monetary amount (including the loan amount) relating to specific qualifying credit. An APR is also triggered by any sign that credit is available to sub-prime or non-status consumers.

Under the CCA the trigger information is similar but there are certain important differences. The loan amount would not trigger an APR figure under the CCA, but the amount of any repayment, fee or charge (or the total amount payable) would. An APR is also triggered under the CCA by a rate of charge, or comparative information or incentives, or any sign that credit is available to sub-prime or non-status consumers.

Positioning and prominence

MCOB3 requires the APR to be stated no less prominently than any trigger information. In addition, there is a requirement for the APR to appear near other information (for example certain risk warnings and information on tied products).

The CCA requires the APR to be more prominent than any trigger information and at least 1.5 times the size of certain price information. It must also be shown with such price information. It does not, however, have to be near to any risk warning or other information, although there are prominence requirements associated with the risk warnings.

Calculation and presentation

The way the APR is calculated and presented under each act is different. The tables below show how the different requirements apply.

APR calculation

FSMA	CCA
APR is calculated on the qualifying credit business entered into (or expected to be entered into) by those targeted by the advertisement. APR is calculated on the business resulting from the advertised credit only.	APR is calculated on any non-qualifying credit business expected to be entered into as a result of the advertisement. APR is calculated on any business resulting from the advertisement, not just that relating to the advertised credit. Referrals to other lenders or brokers must be considered.

Required wording

FSMA	CCA
The overall cost for comparison is X.X% APR	Typical X.X% APR or X.X% APR Typical

Important note: If an APR is triggered under each act, it needs to be stated separately for that part of a dually regulated advertisement. This applies even if the APR figures happen to be the same – the APR needs to appear twice, because of the difference in wording.

There may be cases where an APR is triggered under one act but not the other. However, using only one APR figure may confuse consumers. Firms should take care to ensure that the advertisement does not suggest the figure relates to all products being advertised. This may mean the firm should specifically refer to the products that relate to the stated APR. Alternatively, APRs could be shown for all products.

For some further comments on how to calculate the APR, particularly for business that is expected to be entered into, see the FSA's Qs and As on advertising FSA-regulated mortgages (http://www.fsa.gov.uk/pages/Doing/Regulated/Promo/rules/mcob/index.shtml).

3.2 Risk warnings

FSMA allows firms to use a form of the risk warnings that matches the wording required by the CCA. In practice, this means that one warning may satisfy both acts.

The risk warning must be shown in capital letters (as this is a requirement under the CCA).

Firms should ensure they comply with FSMA on displaying the risk warning. In addition, the CCA requires certain risk warnings to be given greater prominence than any rate of charge (except the typical APR) or any indication or incentive triggering the APR, and be no less prominent than certain financial information.

Risk warnings required by the CCA and allowed under FSMA

Standard warning:

YOUR HOME MAY BE REPOSSESSED IF YOU DO NOT KEEP UP REPAYMENTS ON A MORTGAGE OR ANY OTHER DEBT SECURED ON IT.

Debt consolidation warning:

THINK CAREFULLY BEFORE SECURING DEBTS AGAINST YOUR HOME. YOUR HOME MAY BE REPOSSESSED IF YOU DO NOT KEEP UP REPAYMENTS ON A MORTGAGE OR ANY OTHER DEBT SECURED ON IT.

Risk warning required by the CCA and FSMA

Foreign currency warning:

CHANGES IN THE EXCHANGE RATE MAY INCREASE THE STERLING EQUIVALENT OF YOUR DEBT.

Risk warning required under FSMA for lifetime mortgages and equivalent warning required under the CCA for similar products

The FSMA wording for lifetime mortgage advertisements is different to that required by the CCA for equivalent products, so firms may need to include both warnings in advertisements.

FSMA wording: This is a lifetime mortgage. To understand the features and risks, ask for a personalised illustration.

CCA wording: CHECK THAT THIS MORTGAGE WILL MEET YOUR NEEDS IF YOU WANT TO MOVE OR SELL YOUR HOME OR YOU WANT YOUR FAMILY TO INHERIT IT. IF YOU ARE IN ANY DOUBT, SEEK INDEPENDENT ADVICE.

Important note: The triggers for these warnings are also different and they cover different products. Firms should ensure that they are familiar with the different triggers for these risk warnings.

3.3 Banded advertising

Under the CCA, an advertisement may contain only one 'typical APR'. This must be based on reasonable expectations of all credit business likely to result from the advertisement which is not qualifying credit. Individual APRs may be shown in addition but must be less prominent than the typical APR. The advertisement must also then state a 'from APR' (based on at least 10% of expected business) and a maximum APR, with equal prominence.

By contrast, FSMA requires an APR (representative where necessary) for each product included in an advertisement. This means that where an advertisement for qualifying credit includes a rate table with different 'bands' (eg, different loan amounts) the firm must show the overall cost for comparison for each 'band', to ensure the advertisement is clear, fair and not misleading.

If a rate table covers both qualifying credit and non-qualifying credit, the two different regulatory requirements apply. This may cause some confusion, so firms should take care in how they lay out the information to ensure the advertisement is clear, fair and not misleading.

3.4 Brokerage fees

FSMA requires an advertisement to set out the brokerage fee where a fee may be charged. This may be shown as the amount (which can be a percentage) if known, or if unknown, as a representative amount based on the business expected to arise from the advertisement. This information should be included in all advertisements.

The CCA only requires a firm to state a brokerage fee if the advertisement includes certain financial information, such as a repayment amount or the total payable under the loan. Where the fee requirement is triggered it must be shown as an amount (for example a sum of money) rather than a percentage. If the amount could vary between transactions, a representative fee should be shown within a worked example.

Important note: For the CCA regime it may be misleading to leave out any fee charged in relation to non-qualifying credit, where a fee is included for qualifying credit. This could be the case where the fee is higher than that charged for qualifying credit. In such cases it may be necessary to state the fees or representative fees for both types of product, but it should be clear what each fee relates to.

3.5 Name and address

FSMA requires the firm communicating the advertisement to include its name and contact point. The CCA requires the name of the advertiser and (if certain financial information is included) a postal address. So it is possible to comply with both acts by giving a name and postal address only once, if this meets the relevant requirements.

Important note: Under the CCA the requirements apply to each advertiser. If a broker's advertisement identifies one or more lenders, or if they are identifiable from the advertisement, then each must be named and a postal address (if triggered) stated for each.

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