

# **Consumer Credit Act 1974 – Section 155**

## **Right to recover brokerage fees**

June 2008

OFT301

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## Summary

- 1.1 Under section 155 of the Consumer Credit Act 1974, a consumer is entitled to a refund (less £5) of the fee paid to a credit broker if for any reason the consumer does not enter into a relevant agreement within six months of an introduction to a source of credit or hire.

## The legislation

- 1.2 Section 155 applies where an individual is seeking entry into:
- a regulated consumer credit agreement or consumer hire agreement
  - an agreement secured on land to finance the acquisition or provision of a dwelling to be occupied by the borrower or a relative, or
  - certain agreements which are exempt under the Act.
- 1.3 It does not however apply where the agreement would be a regulated mortgage contract under the Financial Services and Markets Act 2000 and so would be regulated by the Financial Services Authority (FSA), provided that the broker is authorised by the FSA or is an appointed representative.
- 1.4 An individual for these purposes would include a sole trader or a partnership (consisting of two or three persons not all of whom are bodies corporate) or other unincorporated body (not consisting entirely of persons who are bodies corporate). It is not limited to private consumers.
- 1.5 A dwelling means a property which is to be used wholly or substantially for residential purposes. Acquisition of a dwelling would include where an individual purchases a property which he already occupies as a tenant.
- 1.6 Provision of a dwelling would include where a property already owned by the individual is converted into flats to be occupied in whole or part by the individual and/or one or more relatives. It would also include loans to finance repairs or improvements to a property where these are necessary

to maintain occupation of the property or to make it into a fit state for occupation.

## **Fee or comission**

- 1.7 Fee or commission would include any sum which the individual pays to the broker for services provided by the broker. This might include, for example, a fee for arranging a survey or placing an application with a lender.
- 1.8 In addition, any sum paid to the broker which falls (or would fall) within the total charge for credit (TCC) under a consumer credit agreement must be treated as part of the broker's fee or commission. This is irrespective of whether the fee is for the broker's own services, or for the services of a third party, such as a solicitor or surveyor.
- 1.9 For example, if insurance is mandatory (and so forms part of the TCC), and the premium is made payable to the broker, it will be treated for section 155 purposes as part of the broker's fee or commission. On the other hand, if the cheque is made out to the insurer, and is merely handed to the broker for onward transmission to the insurer, it will fall outside section 155.
- 1.10 If a sum is paid to a third party, such as a surveyor, it will not be taken into account for section 155 purposes. This assumes however that it is a genuine and legitimate disbursement for services carried out by the third party. If in fact there is an arrangement whereby all or part of the sum will be rebated to the broker, in respect of services provided by the broker, then it may be treated as part of the broker's fee or commission.
- 1.11 For example, a broker may outsource part of its operations to a packaging agent or other intermediary. This may be part of the same group as the broker, or may otherwise be linked, or there may be arrangements in place to share fees. If an element of the packaging agent's fee is passed to the broker, this may be regarded as part of the broker's fee or commission. The packaging agent may also be a credit broker in its own right.

1.12 In determining whether a sum forms part of a broker's fee or commission, and so would be recoverable under section 155, a court would look at the substance of the transaction rather than how the sum was described.

### **Following an introduction**

1.13 Section 155 applies only if –

- there has been an introduction by the broker to a source of credit or hire (whether a lender or another broker), and
- no relevant agreement has resulted within the following six months.

1.14 For section 155 to apply, the broker need not communicate with a lender directly. The broker may provide the consumer with the contact details for a lender who, in the broker's view, is likely to offer credit or credit on more favourable terms. If this is based on an individual assessment of the consumer's particular circumstances, it may constitute an introduction for section 155 purposes.

1.15 If there has been no introduction, section 155 does not apply. It may however be open to the consumer, under general principles of contract law, to seek to recover all or part of the sums paid to the broker on the basis of a failure of consideration if no introduction is made within a reasonable period. For example, if there is no introduction within, say, one month of appointing the broker, unless otherwise agreed between the parties, there would be a good argument that the money should be returned on this basis.

1.16 If an introduction has been effected, the consumer may also have a right of recovery under contract law without waiting the full six months for section 155 to apply, if the introduction was in breach of the brokerage agreement or the broker had insufficient regard to the consumer's requirements.

## **Refund of brokerage fees**

- 1.17 Where section 155 applies, the consumer is entitled to a refund (less £5) once six months have elapsed following a relevant introduction, if no agreement has been entered into as a result of that introduction.
- 1.18 For these purposes it is immaterial why there has been no agreement. For example, the broker may have found a deal but this was unsuitable or no longer met the consumer's requirements. Or the consumer may simply have changed his mind. If the consumer decides not to proceed, for any reason, he will be entitled to a refund (less £5) under section 155.
- 1.19 If the consumer enters into a credit agreement within the six month period, but this was not as a result of the broker's introduction, section 155 would still apply and the consumer would be entitled to a refund.

## **Unfair practices**

- 1.20 There is no legal obligation on the broker to offer a refund following expiry of the six month period. However, the OFT would expect the broker to make consumers aware of their legal rights in this regard. If the broker failed to do so, the OFT would be likely to regard this as an unfair business practice reflecting on fitness to hold a consumer credit licence.
- 1.21 It would also be an unfair practice not to respond to requests for refunds, where section 155 applied, or not to make such refunds promptly after having received such a request.
- 1.22 In addition, the OFT would be likely to regard it as an unfair business practice if brokers adopted a policy of making consumers wait the full six months before providing a refund in cases where it was obvious that no relevant agreement would be entered into. For example, if the consumer had asked for a refund because he no longer wished to obtain a credit agreement, or wished to do so via another broker or direct with a lender. Provided that it was clear that any loan would not be as a result of the broker's introduction, the OFT would expect the broker to refund fees (less £5) on request.

- 1.23 It is not permissible to 'contract out' of the provisions of section 155. Such terms are rendered void by section 173 of the Act, and would be unfair under the Unfair Terms in Consumer Contracts Regulations 1999. This would also be viewed by the OFT as an unfair business practice.
- 1.24 More generally, brokers need to ensure that they do not act in a way which contravenes the prohibition on unfair commercial practices in the Consumer Protection from Unfair Trading Regulations 2008.

### **Queries and complaints**

- 1.25 If there are queries regarding interpretation of the above provisions, these may be addressed to [credit.guidance@oft.gsi.gov.uk](mailto:credit.guidance@oft.gsi.gov.uk).
- 1.26 Consumer complaints regarding breach of section 155 should be addressed in the first instance to Consumer Direct on 08454 04 05 06. Consumers also have a right to complain to the Financial Ombudsman Service (FOS) on 0845 080 1800 if the matter cannot be resolved with the individual trader.