

NACFB

HELPING FUND UK BUSINESS

Minimum Standards Document

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National Association of Commercial Finance Brokers (NACFB)

Minimum Standards Guidance

Introduction

The guidance below is designed to demonstrate to brokers and intermediaries (“Brokers”) the minimum standards which funders and lenders (“Funders”), the Financial Conduct Authority (“FCA”) and the National Association of Commercial Finance Brokers (“NACFB”) will be expecting Brokers to uphold when conducting their activities.

A Funder’s expectation in this regard will be driven by their need to ensure that those acting on their behalf to carry out regulated (and unregulated) activities are doing so in a compliant and competent manner. Failure to ensure that this is the case may leave the Funder exposed and could mean that the Funder compromises its authorisation, damages its reputation and is subject to litigation.

In addition to the damage which a Funder may suffer, the Broker’s reputation may also become damaged; their authorization (where applicable) compromised and themselves left open to litigation.

The Financial Conduct Authority (“FCA”) have introduced rules, regulations, principles, guidance, which are all designed to communicate to authorised firms (and third parties used by authorised firms) the standards at which the FCA expects firms to conduct business. This is driven by the FCA’s need to protect consumers and the markets in line with their statutory objectives in this regard.

The FLA, the industry body representing UK asset finance funders has also produced non-binding good practice guidance on this topic.

The NACFB has worked with Brokers, Funders and the FLA to create this guidance document for the benefit of all parties. Reference where applicable also needs to be made to the FLA Business Code for guidance for intermediaries dealing with Funders in the Asset Finance industry. Whilst this document will be provided to the FCA, it will only be after our members have been consulted.

Part 1 – Purpose and overview

When does this Guidance apply?

This Guidance applies to brokers and intermediaries (“Brokers”) carrying on credit-related regulated activities as outlined in the Perimeter Guidance Manual (PERG). PERG gives guidance on which activities require FCA authorisation. PERG should be used as a point of reference when considering whether any particular activity falls within the scope of the regulatory regime of the FCA and whether any given communication is a financial promotion. Brokers are advised to take their own legal advice on whether or not their activities are regulated activities and require authorisation.

The NACFB within its code of practice provides further guidance to assist Brokers in determining whether they are considered to be a regulated Broker. This code of practice also includes a guidance note on unregulated brokerage.

Where a Broker proposes a regulated agreement to a lender or funder (“Funder”) where the customer is an individual, sole trader, partnership of 3 or less, even where the business exemption or high net worth exemption may be relied on, the Broker is likely to be engaged in a regulated activity and require authorisation. For mortgages, a closer look at the definition of a ‘regulated mortgage contract’ is necessary along with a consideration of the definition of second charge lending and buy-to-let mortgages.

The Rules and Guidance applicable to consumer credit firms are primarily set out in the FCA Handbook in the Consumer Credit Sourcebook (CONC) but other Handbook provisions are also relevant to consumer credit activities. Other specific rules for firms carrying out particular activities are set out in the other specialist sourcebooks. For example, there is the Mortgages: Conduct of Business Sourcebook (MCOB) and the Insurance Conduct of Business Sourcebook (ICOB).

The FCA high level standards apply to all firms. These include:

1. Principles of Business (PRIN)
2. Threshold Conditions (COND)
3. General Provisions (GEN)
4. Complaints (DISP)
5. Senior Management Arrangements, Systems and Controls (SYSC)
6. Statements of Principle and Code of Practice for Approved Persons (APER)
7. The Fit and Proper Test for Approved Persons (FIT)
8. Fee Manuals (FEES).

It is important that Brokers become familiar with the above standards particularly PRIN. The FCA is moving more into being a principles-led regulator and will be looking at Brokers and other authorised firms to ensure that they are doing what is necessary to comply with PRIN.

Other Sections of the handbook will also apply across firms:-

9. Supervision (SUP)
10. Decision Procedure and Penalty Manual (DEPP)
11. The Enforcement Guide (EG)
12. Financial Crime: A guide for firms (FC)
13. Perimeter Guidance Manual (PERG)
14. The Unfair Contract Terms Regulatory Guide (UNFCOG)

Brokers should also be aware of the provisions of the Consumer Credit Act and the Financial Services and Markets Act 2000 and other secondary legislation.

Brokers will either need to have full permission or limited permission. Brokers are advised to ensure that their permissions cover credit broking but also to consider adding the permissions of debt counselling and debt adjusting so as to enable the Funders with whom the Brokers work to rely further on the Broker to carry out such activities for them. This will assist Brokers to build a fuller relationship with their instructing Funders rather than the Funders seeking assistance for such activities elsewhere.

Some Brokers may have Appointed Representative status and carry out regulated activities under the supervision of another firm that the FCA has authorised thus meaning that the Broker will not need to seek their own permissions and can instead rely on those of their Principal.

For further information, Brokers should refer to the FCA website at www.fca.org.uk.

The Financial Conduct Authority (“FCA”) have introduced rules, regulations, principles, guidance and consultation papers which are all designed to communicate to authorised firms (and third parties used by authorised firms) the standards at which the FCA expects firms to conduct their business.

The guidance below is designed to demonstrate to Brokers the minimum standards which Funders may be expecting them to demonstrate. This guidance note is not implementing additional requirements on Brokers but instead is designed to support Brokers to implement a minimum set of standards into their day to day activities. Failure to do so may have serious consequences for Brokers as set out later in this document.

A Funder’s expectation in this regard will be driven by the need to ensure that those Brokers who are selling the Funder’s finance products and who are carrying out regulated (and unregulated) activities for the Funder are doing so in a compliant and competent manner. Failure to ensure that this is the case may leave the Funder itself exposed to criticism or penalty from the FCA and could mean that the Funder compromises its authorisation, damages its reputation and is even subject to litigation.

Funders are required by the provisions of CONC, specifically CONC 1.2.2(2) to take reasonable steps to ensure that other persons acting on its behalf comply with CONC and also has duties generally under other provisions within the FCA handbook to take reasonable steps to ensure that the Broker complies with other rules, guidance and legislation, some of which are identified within this Guide.

The Guidance is intended to support Brokers to prepare for an NACFB monitoring and supervision review as provided within the NACFB Code of Practice but also to support and assist Brokers to prepare for a supervision and monitoring review conducted by a Funder or by the FCA.

This minimum set of standards was developed with input from a small group of Funders across a variety of different market sectors which Brokers could be working with day to day. However, the document does not represent the view of all Funders so Brokers might see other sets of supervisory and monitoring reviews taking place and it is important for each Broker to speak with their Funders to ensure that they are complying with their expectations in this regard. The level of supervision and standards required by a Funder will vary from Funder to Funder depending upon the Funders attitude to risk.

We have taken into account when preparing this set of standards that we need a set of standards to cover a wide variety of Brokers operating in a variety of business sectors and varying in size from sole traders to companies and large Broker networks. We have therefore taken a proportionate approach when drafting them.

Also at the end of this document in Appendix 2 is a document titled 'Broker Model Checklist Guidance Notes and Broker Checklist.' This is designed to summarise the types of issues which the Funder will want to see that the Broker is aware of and complies with in relation to the obligations set down for Brokers in the Consumer Credit Sourcebook (CONC). This document has again been developed over a period of time with input from brokers and funders along and with the NACFB. It is therefore endorsed by the NACFB as the criteria which it will be expecting its member Brokers to be compliant with. It is important however that Funders may themselves have other criteria and this document is not to be relied on as an exhaustive list in this regard, merely as a strong guidance example of the expectations that generally Funders will have (in addition to their own bespoke expectations).

1. Why create a minimum set of standards document?

There is a lot of literature out there for Brokers, Funders and trade associations aiming to direct each party as to their respective obligations. There is also literature directing customers as to what service they should expect to receive and what to do should they not receive this service. This document is designed to capture the very minimum standards which Brokers should be looking to attain in order to satisfy their compliance obligations and to reassure their Funders that they are able to perform compliantly in the new regulatory market place.

The FCA expect all firms to have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and internal control mechanisms, including sound administrative and accounting procedures and effective control and the safeguarding of arrangements for information processing systems.

The NACFB will be looking to capture as much information as it can from its members to enable it to share such information amongst its members so as to achieve high standards for all. Where information is shared with the NACFB on a confidential basis, it will be kept as such.

It may be that over time there will be transparency between Funders as to the outcomes of any audits against the checklist contained in this document. A specialised standard audit document may eventually be introduced to assist with this process. A consent form may be introduced which the Funder may ask the Broker to sign should it be agreeable to the disclosure of some or all the results of any such audit. This is not in place currently but is a consideration for those who are endorsing this document. Full and frank disclosure will help standardise levels of assessment and drive conduct up across the industry. It is hoped that such transparency will encourage higher standards through shared learning over time and become part of the norm. It will also help support Brokers to demonstrate to the FCA that they are maintaining the industry standards expected. The Broker's consent will always be sought for any such disclosure and as to the extent of any such disclosure. Such disclosure is likely to only take place where lessons can be shared and communicated and may even be done anonymously where preferred.

Where there are confidentiality clauses and/or restrictions on any information which Brokers may otherwise share, the Broker should simply indicate that due to such restrictions they are unable to share this information as to do so would breach their duties to a third party or pursuant to a contractual agreement. Clear communication is key in ensuring that confidential information is kept as such.

The Broker should however seek to disclose information wherever is possible particularly in order to maintain high standards of behaviour across the industry and to maintain effective communication between it and its Funders, the NACFB or the FCA. In any and all circumstances, the Broker must disclose information where so required to do so by law or by any regulatory body.

1.1 Supervisory and monitoring reviews: trade associations

If the Broker is a member of the National Association of Commercial Finance Brokers (NACFB) then it must comply with the NACFB Code of Practice.

Similarly if the Broker is a member of another trade association it will need to act in accordance with that organisation's Code of Practice.

If the Broker does not, then its membership with the NACFB or other trade association could be compromised and/or terminated. The Broker will be subject to a review from time to time by the NACFB or other relevant trade association to ensure its ongoing suitability to hold membership of that body. The trade associations have their own reputations to protect and must be seen by the industry as supporting only genuine and compliant behaviours.

The relevant trade association may carry out the review itself or appoint a third party compliance business, to carry out the review on its behalf.

This guidance is designed to give Brokers an insight into the elements such a review might involve but there may be further requirements imposed upon the Broker by the relevant trade association of which it is a member, which are unique to that association. Brokers should check carefully the terms of both their membership and the relevant Code of Practice to ensure that they are in a position of compliance with these at all times.

Brokers should be reminded that Funders have a duty to ensure that Brokers that they deal with are properly authorised for the activities which the Funder is asking them to undertake and that the Broker is carrying out these activities in accordance with the relevant FCA provisions.

1.2 Supervisory and monitoring reviews: FCA

Pursuant to their own authorisation, Brokers must comply with FCA regulations, guidance, rules and principles in so far as these apply to them.

Regardless of a Brokers supervision classification (see below), the FCA can contact a Broker at any point to gather information and address risks. The FCA may be notified of the need to investigate a Broker by any number of people and for any number of reasons including because of allegations made by the Brokers' competition, complaints from customers, reports from Funders or such other circumstances as may occur during the Broker's authorisation so it is vital for Brokers that should they become aware of a potential issue, particularly one in which the Broker recognises it could be deemed to be in breach of the FCA's expectations of it, that the Broker immediately acts proactively to notify the FCA of this before the FCA hear it from another party. This is to ensure that the Broker also remains in compliance with PRIN 11 in addition to any other potential breach it considers it may be in risk of.

The FCA will aim to resolve problems by way of communication and cooperation with Brokers and will only use their disciplinary and enforcement powers if such matters cannot be resolved cooperatively or if the breach is so severe that it does not warrant any such warning to the Broker. Failure to act in a manner which the FCA deems appropriate may lead to authorisation being revoked, a fine and in extreme cases criminal prosecution (see below).

1.3 Supervisory and monitoring reviews: The Funder

In addition to 1.1 and 1.2. above, the Broker is also likely to have legally enforceable contractual obligations to the Funder in its trading agreement with them. It is important that the Broker is aware of the terms upon which it is contracting with each of its Funders to ensure that it acts in accordance with these requirements. Each contract is different and the Broker must take the time to painstakingly read through the contract carefully noting specifically any requirements which fall outside its usual practices to ensure that it can meet and continue to meet these requirements.

Failure to act in accordance with these contractual obligations could mean that the Broker's relationship with the Funder is terminated and that the Broker is liable to pay the Funder compensation for any losses it incurs as a result (direct or indirect) of the breach by the Broker of these contractual obligations.

1.4 Supervisory and monitoring reviews: other requirements

Funders will also want to ensure that Brokers are acting compliantly with other legislation such as the Consumer Credit Act, Financial Services and Markets Act 2000 as well as other general consumer protection legislation such as the Consumer Rights Act 2015.

Part 2 – What is likely to be covered by a review?

2. What is a review likely to involve?

The FCA, trade associations and the Funder are all likely to be looking to the Broker to demonstrate very similar attributes.

The approach used by the NACFB clearly demonstrates the level of thought that has developed to try to encourage communication between the Broker and the body supervising it for the benefit of both parties. This is one of the principles which the FCA (who is also targeted with its own objectives including the protection of consumers and market integrity) is looking to achieve to improve performance across the industry. Funders also promote such an approach as this which then enables the Funder to ensure that it is protecting its customers and itself when relying on the Broker to carry out activities on its behalf.

The NACFB Code of Practice requires its member Brokers to appoint a person who is a member of the Brokers management team to be responsible for the monitoring and reporting to the governing body of that member Broker in respect of the Brokers arrangements which are designed to ensure that the Broker is complying with the NACFB's Code of Practice. This person should have a title of 'Code Compliance Officer' and be easily identifiable both internally and externally by the NACFB. The member Broker is obliged to notify the NACFB of the identification of this person and should there be a change in the identity of the person holding this position then this must immediately be notified to the NACFB. This arrangement is so as to ensure that the NACFB has a clear contact within the member Broker and also that the Broker has a designated person supervising the implementation of the practices which the NACFB expects.

The NACFB will wherever possible conduct an annual review for each of its member Brokers as against the requirements of its Code of Practice to ensure that the Brokers are maintaining the standards which the NACFB would expect from a member Broker. There is a provision within the Code of Practice that requires all member Brokers to fully cooperate with the NACFB at this review.

The NACFB makes it clear that the information which is gathered by the NACFB at such review will be confidential and will not be disclosed to any third party without the Broker's written consent other than under certain conditions which are set out within the Code and include disclosure required by law or requested by any supervisory, regulatory or governmental body.

In principle the NACFB will be looking at the Broker's structure and whether it fulfills the Threshold Conditions for such businesses (as set out in Part 1B to Schedule 6 of the FSMA). These include:

- Location of Offices: requires the Broker's head office and, in particular, its management to be in the UK;
- Effective Supervision: the Broker must be capable of being effectively supervised by the FCA;
- Appropriate resources: Resources includes both financial and non-financial resources (includes systems, controls, plans, policies, HR, employees);
- Suitability: whether the Broker conducts, or will conduct, its business with integrity and in compliance with proper standards and can demonstrate that it conducts, or will conduct, its affairs with due skill, care and diligence;
- Business model: whether the Broker's strategy for doing business is suitable for its regulated activities.

Below we focus on the checks which a Funder is likely to make on a Broker though some or all of these checks may also be made on the Broker by a trade association and/or the FCA at some point in the Broker's relationship with these parties. It is therefore beneficial to both the Funder and the Broker that the Broker ensures that it is in a position which will satisfy the Funder as this should then in turn satisfy a trade association and the FCA in relation to both the Broker and the Funder.

At the start of the relationship and on an ongoing basis, the Funder will want to ensure that the Broker is meeting a minimum set of standards in so far as the Broker is selling the Funders products. This will in turn minimise the Funder's own compliance risk in dealing with that Broker.

The review is likely to be conducted onsite and may be restricted to a review of documents, systems, records and verbal verification by the Broker's management as to the Broker's practices however it may go beyond this on occasion. The review itself may vary in length and frequency. For example it may be that one significant review is carried out annually with a lighter review carried out quarterly. The review will also provide support and suggest actions to enable the Broker to achieve the standards expected or to put in place improvements where appropriate.

It is likely that the following matters, documentation or testing will at some point be asked for or involved in a review of a relationship with a Broker at some point during their relationship with the Funder (and also therefore a trade association or the FCA itself). These matters have been split into two sections for ease. Neither list is intended to be exhaustive.

SECTION A: Firm Level Requirements

2.1. Status, Authorisation and Activities

Status

The most important starting point for a Funder will be to check the composition of the Broker namely to check whether it is a corporate entity, a partnership, a sole-trader or another form of organisation. This is to reassure the Funder that the Broker is correctly established, not a fraud and has supporting documentation to verify its identity.

Companies

If the Broker is a limited company or limited liability partnership (LLP) then the Funder will need to check on Companies House that the Broker is still listed as active and is up to date with all its accounting duties. The Funder is likely to also carry out personal searches on all the directors of the company or partners of LLPs to ensure that the people with whom it is dealing are appropriately authorised by the company and do represent the company's best interests. The Funder is likely to include these checks in its annual review on the company to ensure that the director or partner records the Funder holds are up to date and that the company has ensured that the Companies House register has been maintained and correctly reflects the true position of the company and its management.

The Funder may also check the constitution of the company (its Articles of Association and Memorandum) to ensure that the Company's objectives are sufficient to enable it to legally carry out the tasks for which the Funder may delegate to it and that the Broker would not be acting outside of its authorities in this regard.

Partnerships

Similarly for a partnership, the Funder may check for a Partnership Deed, the identity of the partners and the delegation of powers and authorities between them in this regard.

Sole Traders

If the Broker is a sole trader then a check will be carried out on the reputation, trading history and account history of the business and a credit check is likely to be carried out.

There are other forms of businesses such as charities, unincorporated associations, educational facilities, local authorities and others all of which will require very distinct checks to be carried out by the Funder to ascertain the identity and structure of the business to which it is entrusting its business to before the Funder will feel comfortable entering into any such relationship with that body.

It is important therefore that the Broker ensures, before they approach a Funder or as soon as possible after they are approached by a Funder, that their documentation and other paperwork in relation to their structure, internally and externally, is full, detailed, appropriate and properly signed off by the relevant body or professional.

The Funder will have an obligation to ensure that it has carried out these very basic checks before proceeding with a relationship which could jeopardise its authorisation, business, reputation and/or its customers.

If there is a change to the composition, change of control or an insolvency of the Broker during a relationship between it and a Funder, this must be notified by the Broker to the FCA and to the Funder as soon as possible. Aside from the insolvency situation, the Funder is likely to carry the aforementioned checks again. It is likely that there will be a 'change of control' and insolvency clause in the contract between the Funder and the Broker which will enable a Funder to terminate a relationship if it is not satisfied with a Broker's change in structure or control or if the Broker goes insolvent.

The Funder is likely to request copies of any notifications made by the Broker to the FCA at the beginning of the relationship with the Broker and throughout. The Broker will have similar obligations to notify the NACFB of any such occurrences.

Authorisation and Activities

If it is intended that the Broker will be carrying out regulated activities, the Broker must have the relevant (FCA) authorisation with the correct permissions to carry out the activities for which the Funder will be expecting them to carry out. The most obvious is permission for credit broking however it may be that the Funder will be expecting the Broker to carry out debt-related activities for it as one example and as such the Broker will then be required to have the relevant permissions for these activities. If the trading agreement is silent as to the specific permissions which are required by a Funder, the Broker must check this point with that Funder before entering into the trading agreement. If the Broker represents to the Funder that it can carry out certain activities for which it does not have the permission to carry out by the FCA then the Broker can be subject to disciplinary, civil or even criminal sanctions as set out later in the document. The Funder should check the Financial Services Register when onboarding a Broker but it is good practice for the Broker to ensure that this situation is clear before it embarks upon its relationship with that Funder.

The Broker should also ensure it has all other licences, consents, permits, insurances or registrations which it requires in order to compliantly carry out its business and activities.

The Broker is under a duty to report on any amendments or revocations to any such authorisation, licences, insurances or consents to those it is dealing with including its Funders to enable the Funder to assess its ability to maintain the relationship with that Broker following such amendment or revocation. The Broker should also carry out its own assessment in this regard.

2.2 Culture

It is important that the Broker can demonstrate that it has the right culture within its business and that this culture compliments the culture of the Funder.

The Funder may ask to see the Broker's business plan, its growth strategy and its current financial position. The Funder will want to ensure that the Broker is solvent and will remain so within the term of the anticipated relationship.

It will also want to ensure that the Broker's ambitions will not stretch it beyond the Broker's resources, financial or otherwise, which could then compromise the Funder's customers or the Funder's relationship with the Broker.

This is very much along the lines of the Threshold Conditions which are set out within the FCA Handbook and reflect Schedule 6 of the FSMA (as we have already mentioned above in relation to the checks which the NACFB will carry out).

You will be expected to demonstrate that you, and everyone in your firm, treat your customers fairly and in accordance with the FCA principles. With this in mind you should be able to justify the pricing and fee structure you deliver to each customer.

The Broker will be expected to demonstrate to the Funder that it treats its customers fairly and in accordance with the six treating customers fairly principles. It will also need to demonstrate to the Funder that it complies with the 11 principles of business (PRIN) as set out in the FCA Handbook. For convenience we set out PRIN below (replacing 'firm' with 'Broker'):

1. Integrity: A Broker must conduct its business with integrity.
2. Skill, care and diligence: A Broker must conduct its business with due skill, care and diligence.
3. Management and control: A Broker must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
4. Financial prudence: A Broker must maintain adequate financial resources.
5. Market conduct: A Broker must observe proper standards of market conduct.
6. Customers' interests: A Broker must pay due regard to the interests of its customers and treat them fairly. There are six consumer outcomes that Brokers should strive to achieve to ensure fair treatment of customers. These remain core of what the FCA expect from firms. Details of the six outcomes can be found on the FCA Website at www.fca.org.uk/consumer-credit.
7. Communications with clients: A Broker must pay due regard to the information needs of its customers and communicate information to them in a way which is clear, fair and not misleading.
8. Conflicts of interest: A Broker must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.
9. Customers: relationships of trust: A Broker 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;
10. Clients' assets: A Broker must arrange adequate protection for customer's assets when it is responsible for them;
11. Relations with regulators: A Broker must deal with its regulators in an open and cooperative way, and must disclose to the appropriate regulator appropriately anything relating to the Broker of which that regulator would reasonably expect notice.

The FCA use PRIN to underpin its whole approach to regulation. The FCA take a principles-based approach to supervision. It is extremely important that Brokers comply with PRIN and are able to evidence their procedures and documentation around the implementation of these principles to the FCA, Funders and trade associations. Many of the cases which the FCA have proceeded to enforce upon contain reference to breaches of PRIN. In determining whether PRIN has been breached, the FCA has indicated that it is necessary to look at the standard of conduct required by the relevant Principle in question at the time. A breach of PRIN may lead to disciplinary proceedings and enforcement action being taken. We have discussed this later on in this document.

Also at the end of this document we have included a 'Broker Due Diligence checklist' which is designed to give Brokers some live examples of the checks which might be carried out so as to demonstrate a Broker's compliance with PRIN including the minimum standards expected in relation to their implementation in practice. For example, a Broker may be able to demonstrate to a Funder how they comply with Principle Nine by taking the Funder through the Broker's sales processes and showing the Funder some example deals so as to evidence how the Broker explained that the product was suitable for the customer. To help a Broker evidence this, documentation and proof of training by the Broker to its staff may be provided to the Funder. This provides a tangible record upon which the Funder can also rely if it is challenged by the FCA in this manner.

An example of positive culture might also be evidenced by the Broker having maintained up-to-date training records for each employee, documented policies and procedures with evidence of their implementation, strong complaints handling processes and strong treating customer fairly with management information across all of these to show the success of such measures.

2.3. Financial Promotions

The Funder will consider the marketing opportunities of the Broker including what it does now and what the Funder may ask it to do. Funders will quite often hold promotions and will expect its Brokers to communicate such promotions effectively and compliantly. The Funder may check to see whether the Broker has an effective communications policy, procedures for sign off and approval systems already in place for its current and any future financial promotions so as to be capable of conducting financial promotions compliantly both in relation to the Broker's own interests and to provide support if the Funder requires its assistance with its financial promotions.

Brokers might be asked to evidence this by producing written sign off procedures along with a file containing their approved financial promotions that are published in the market. This may include a log detailing the evidence of approval and rationale behind these.

2.4. Policies and Procedures

Any review which is carried out on a Broker, from time to time, is likely to involve an assessment of the Broker's policies and procedures. In particular there is likely to be a consideration of whether these documents, and the practical implementation of these documents, is adequate for FCA regulatory purposes, to fulfill the requirements of any relevant code of conduct and/or to assist the Broker fulfill its obligations under any contractual relationship it has with a Funder.

In practice, a review of this is likely to involve the Funder requesting sight of the documented policies and a further request that the Broker explain and demonstrate to them that these policies have been implemented into its business practices.

A compliance manual and compliance monitoring programme and plan should also be put in place to evidence how a Broker will remain informed of changing compliance issues.

We would suggest that Brokers' Policies and Procedures should cover and be maintained on matters such as:

- (i) Treating Customers Fairly;
- (ii) Identifying and dealing with customers who are vulnerable or have mental health issues;
- (iii) Complaints Handling;
- (iv) Disaster Recovery and Business Interruption;
- (v) Data Protection;
- (vi) Anti-Money laundering (AML): to adhere to legal requirements around AML and prevent both the Broker and the Funder being exposed to money laundering and financial crime;
- (vii) Bribery and Corruption/Gifts and Entertainment;
- (viii) Risk management, Audit and Monitoring, Conflict of Interests and exit planning;
- (ix) Record Keeping;
- (x) HR;
- (xi) Financial Promotions Policy.

This list is by no means exhaustive. Other policies or procedures may be required.

The Funder may also want to see evidence supporting the effective implementation of the policies into the procedures and practices of the Broker. It may also want to monitor these to ensure that they are being implemented continuously and adapting where necessary to any changes within the Broker or the marketplace.

2.5. Systems and Controls

The review will assess whether the systems and controls within the Broker meet standards.

The types of systems and controls a Broker must have in place vary from Broker to Broker because each Broker must ensure that these systems and controls reflect the nature, scale and complexity of their business. Consideration must also be given by the Broker to the risks that the activities which they are carrying out could pose to customers and take steps to mitigate these risks. For example, smaller Brokers who are dealing with a relatively small number of customers will not be expected to have the same scale of systems and controls in place as a large Broker with a larger customer base would be expected to have in place.

However the systems and controls across all Brokers must be effective for each Broker and the Broker must be able to evidence this fact. Being a smaller Broker does not excuse a lack of systems and controls.

Brokers should refer to SYSC to check how these requirements apply to them.

i. Governance

The review will include checking that the Broker has appropriate governance arrangements in place, has a strong, realistic business plan (updated annually) and has the ability to produce management information if required on a variety of topics that the Funder may request from time to time.

The Funder will look at the resources of the Broker, including the number of people employed or engaged with the business, its facilities and premises to ensure that the Broker is appropriately set up to meet the standards expected of it both in terms of performance of the activities and also in terms of compliance. It is also to protect customers to ensure that they are or will be receiving a full and proper service from the Broker.

The Funder will also look at the financial position of the Broker, what is in place should the Broker struggle or anticipate struggling financially and how the Broker should act if a change in its control occurs or is anticipated to occur. The Funder may, for example, carry out checks with the FCA to ensure that the FCA has been provided with the correct financial year end accounts. The Funder will also want to see that there is a member of staff at the Broker who is responsible for the oversight of the Broker's financials and its accounting system and whether the Broker has instructed proper accountants. It may also include a check that records are kept of the income and expenditure of the Broker internally. This includes records of any commission payments received and any clawbacks that take place.

A Funder may also require the Broker to maintain a register which records all new business undertaken by the Broker, the source of this business and the outcome of such business. This will help the Broker to maintain awareness and control over its own activities and that of its staff and third parties and therefore be in a position to communicate this information to the Funder upon its request.

Brokers will also be required to evidence the sales channel and/or introducer channel it has used.

ii. Systems

The Funder will want to ensure that the Broker has appropriate information technology ("IT") systems or is willing and able to use or access the Funder's own software on its systems not only for day-to-day operational activities but also for reporting and data protection reasons.

iii. Conflicts of Interest

It is also possible that the review will ask for the Broker to explain how it identifies and mitigates conflicts of interests. Conflicts of interests may exist, for example, between a Broker and any person directly or indirectly linked to the broker or in relation to any particular customer or as between customers. The Funder is likely to ask to see any record that is kept by the Broker as to such conflicts and how the Broker has resolved the conflict.

It is important for the Broker to check whether a conflict of interest situation exists to ensure that the relationship between it and the Funder and/or customer can proceed without compromise to any of these parties.

The Broker should check for any cross-guarantees, any mutuality of obligations and any expected future occurrence which may impact on this assessment by it.

One of the most obvious and common examples of a conflict of interest that might arise is where the Broker introduces a customer to a Funder based purely on the commission payment it will receive from the Funder (being larger than the other Funders it could have recommended) rather than selecting the Funder that is offering the best product for the customer's needs. Another example is where the Broker has a preference to a Funder because of some family connection or because of other financial reasons.

iv. Structure

Regardless of the size of the business, the Broker should have a structure chart in place clearly demonstrating the structure of the business, showing the current positions which exist within the Broker, clear job descriptions of these positions and the division of duties between staff. The Broker should also demonstrate that there are adequate reporting lines in place. This will help the Broker evidence that its staff's responsibilities are clear and transparent internally and externally to increase confidence of the Funder that the Broker is in control of its setup and the division of duties so as to be able to effectively supervise these.

Internal communications should be considered and reviewed to ensure that these work effectively and are available to all.

It is important to show structure and the responsibilities of each person involved with the Broker, even if the Broker is a small outfit consisting of just one Director.

v. Recruitment

The Broker should identify its recruitment policy and implement procedures which ensure that a full job description is created in relation to each and every role within the Broker business as we have referenced above. Employees should be suitable to operate in the regulatory environment and fit and proper to do so.

vi. Third Party relationships

The Funder will also look to ensure that the Broker is managing its third party relationships to ensure adequate internal controls are in place.

vii. Appointed Representatives/Introducer Appointed Representatives

If the Broker is an Appointed Representative (AR) or Introducer Appointed Representative (IAR) of the Funder, the Funder will check that the Broker has the necessary contracts in place and is acting compliantly with the arrangements between them and in accordance with the contract entered into between the parties.

As the Funder has direct responsibility for the Broker in relation to its compliance with the FCA requirements where the Broker is its AR, and as the Broker is acting under the authorisation of the Funder, the checks which the Funder will carry out on the Broker are likely to be more intense than those which it would carry out on Brokers who have their own separate authorisation. This means that many of the checks which we set out in this document will be carried out and probably in a more detailed and frequent manner than otherwise.

Fewer rules apply to introducer appointed representatives than full appointed representatives however again the Funder's supervision is likely to be greater than that which it would otherwise be. The Funder will want to ensure that the Broker is not carrying out activities which are beyond its scope of appointment as the Funder's IAR.

If a Broker has a Principal which is not the Funder concerned, the Funder is likely to check the identity of that Principal and the activities which the Broker has been asked to carry out to ensure that there is no breach of 12.5.6A of SUP in addition to various other checks surrounding data protection and conflicts of interest to ensure that the Broker is not compromised in carrying out the activities of the Funder by being an AR for another party.

It is the Broker's responsibility to keep the Funder updated with any AR or IAR changes.

Brokers who themselves have ARs or IARs must ensure that they have formal contracts/agreements in place with these parties and that they are reviewed regularly. The Broker must ensure that it is carrying out the relevant checks on their ARs and IARs and that a record of these checks is maintained so as to be produced to Funders or the FCA when requested. The Broker should inform the Funders and the FCA where required of any such relationships that exist and upon request provide a copy of their contract with these parties. Brokers must ensure that the FCA and the Funders have up to date records of the ARs and IARs the Broker is dealing with and the Broker must proactively notify the FCA and Funders of any changes to these details. Checks will be carried out that all ARs and IARs are recorded as such on the FCA register.

viii. Insurance

The Broker may have insurance in place either at a professional indemnity capacity or other. The Funder may ask to see a copy of the cover that the Broker has in this regard and may even ask to be noted as an interested party depending on the activities which it is expecting the Broker to carry out.

ix. Breach Register

A 'breach register' is an effective way for the Broker to record any breaches of regulation or otherwise which have occurred and to record the rectification that has been carried out to resolve any such issues. The Funder is likely to check that a Broker has a form of breach register in place and that a Broker is aware of the FCA notification procedure and has put in place systems and controls to ensure that its obligations in this regard have been and will be met particularly where any breach is reportable. The Funder will want an honest and open relationship with its Broker and Broker's should not be reluctant to disclose any breaches to the Funder. Provided the breach has been noted and rectified and evidence can be provided to the Funder that this has been the case, and then the Funder will be in a better position when it reports to the FCA.

x. Risk Assessment

The Broker should have a thorough risk assessment plan demonstrating to the Funder that it understands the risks it may incur in carrying out its activities and can demonstrate how it has put in place measures to mitigate these risks. These should be in line with any policy that the Broker has in place. It may also be necessary to keep a 'risk register' to evidence this. The register will need to be updated from time to time and reviewed regularly to ensure it remains relevant. This includes an assessment in relation to financial crime and anti-corruption to ensure that customers are protected from rogue or negative behaviours. It also includes a health and safety assessment.

xi. Data Protection

The Funder will check that the Broker is registered with the Information Commissioner's Office (ICO) and has any relevant approval in place in this regard.

The Funder may also check that the Broker brings to the customer's attention how the Broker uses the customer's personal data it collects and that this use is in a manner appropriate to the means of communication. Customers must be provided with a clear and simple method to cancel their consent for the processing of their personal data. The Broker will need to ensure that it has processes in place which will ensure that the Funder is notified in relation to any changes of position communicated to it from the customer in relation to this and vice versa. Brokers should ensure that the authority given by the customer is maintained for each customer and kept up to date. Any customer information must not be passed to a third party unless authorised by the customer.

It may be that the Funder will agree the form and content of a Privacy Notice for the Broker to give to customers. The Broker will need to evidence to the Funder that it is presenting such a notice to the customer. If the Broker has its own Privacy Notice which it wishes to use then the Funder should have reviewed this notice and approved its use for its customers.

A customer can request the Broker to confirm where their personal data was obtained and the purposes for which it has been used or shared. The Broker should ensure that it can meet any such request and that there is a process in place by which the Funder and Broker ensure that any such response is accurate and correct. The response must evidence that the use of the customer's data has been in compliance with the Privacy Notice which was presented to the customer.

The Funder will expect to see that the Broker has taken a practical approach to the management of data protection and data security. Best practice in this area is usually for customer information to be kept in a lockable cabinet or kept electronically via a secure computer (that is locked when unattended) with password protection. Wherever possible, Brokers should record calls with customers whether this is by taking a written account of the call or via an electronic call recording system.

Brokers should ensure that data protection authority is maintained for each customer and is kept up to date and that any customer information is not passed to a third party unless authorised by the customer. Brokers will have varying policies and procedures around Data Protection compliance and this might vary from Broker to Broker.

There should be adequate systems and controls on the destruction of data and other confidential waste and the Broker may be asked to evidence this.

xii. Gifts, Hospitality, Events and Inducements

Brokers should be careful about accepting any form of gift or inducement from Funders.

Records should be kept by the Broker of any gifts, hospitality, events, entertainment or inducements offered either from a Funder, intermediary or a customer in relation to any particular deal or transaction and generally Brokers should only accept such gifts or inducements in very limited circumstances and must be justifiable.

Brokers should also keep a record of any gifts, hospitality or inducement it gives to others as well again with evidence that such a gift etc is justifiable and not intended to bribe or otherwise mislead.

The record should include the nature of the gift or inducement, the monetary value of it and the reasons why it was acceptable. It should also be expressly explained why it would not breach regulatory obligations or the Broker's own policy in relation to these items.

xiii. Commission

Controls on the payment of commission and incentives should also be in place. The Broker must ensure that they comply with the requirements around commission disclosure to customers and that they keep up to date with any changes to these requirements.

Checks will be carried out to ensure that the Broker has disclosed to the customer in a regulated activity that in all cases in good time before the agreement is entered into, the existence of any commission or fee or other remuneration payable to the Broker by the Funder or a third party.

Where the Broker does not take a fee from the customer but only a commission or fee from the Funder, the commission arrangements must be disclosed but the amount of the commission does not need to be unless the customer requests this information.

If the customer requests details of the amount of the commission or as to how a Broker may be remunerated, then the amount of commission, fee or other remuneration must be disclosed by the Broker upon request in good time before the agreement is entered into. The Broker must evidence that it has processes which enable it to do this.

However, if the Broker takes a fee from the customer instead of or in addition to the fee from the Funder, then the existence of the commission and the amount must be disclosed to the customer up front.

The Broker must be able to demonstrate that they have considered all available sources of funding and only select a Funder where it is in the best interests of the customer to do so. The Broker should be reminded of its disclosure obligations to the customer as discussed earlier. The Broker should document their selection of Funder and the reasons for that selection. The Broker should also document their selection of the product and the reasons for this selection. The Broker should also document how the Funder and the product meet the customer's requirements based on the information which the Broker possesses and the information which is available to it.

The Broker should be able to evidence that the commission structures which are in place do not influence the recommendations which are made to the customer and that the customer's best interests are always put first. Brokers should however note that some Funders as standard practice require the disclosure of commission in all cases and Brokers should confirm the position with each of their Funders in this regard.

ivx. Financial Sanctions regime

Checks may be carried out to ensure that a Broker complies with the Financial Sanctions Order and that it is not providing any financial services to the targets identified on the HM Treasury list of targets known in the UK and/or listed on the Consolidated Financial Sanctions List (HMT List).

2.6. Senior Management and Approved Persons

The Funder will also want to ensure that the Broker has an appropriate senior management structure. This will vary depending on the size of the Broker. The Funder will want to ensure that approved persons have been appointed and are in place and that responsibilities have been appropriately allocated between them and other senior managers. If an individual is applying to be an approved person, the FCA will consider whether that individual is honest (including being open regarding any self-disclosure). Integrity, reputation, competence, capability and financial soundness are also considered.

The Funder may review the approved persons appointed to ensure that the responsibilities of these positions are being delegated to the correct people and that such people are fulfilling their duties in this regard.

2.7. Junior Staff and non-managers

A review may involve the reviewer speaking to junior staff so as to identify any lapses by the Broker to communicate effectively down the chain. This will particularly be important where there are frontline staff dealing with customers.

This is so as to identify any training needs. It is likely that the review will expect the Broker itself to evidence that it has carried out similar testing on its own staff to ensure that the training delivered to them has been effective. The Broker should demonstrate that such testing has been carried out and that where any lapses were identified that further training was given. There should also be an escalation system for those staff that are identified as incapable of carrying out the role despite the further training and the Broker should evidence that it has the processes in place to enable it to deal with such staff.

The Funder may also ask generally to see the appraisal history of staff, staff turnover figures, staff qualifications and employment history.

2.8. Third Parties and Outsourcing

If the Broker itself outsources any part of the regulated activities which have been delegated to it, it will need to demonstrate that it has appropriate outsourcing arrangements in place to supervise and monitor the firm whom it has entrusted to carry out these activities. It must ensure that any Funder is notified of the outsourcing of such activities and that they approve of the firm which has been appointed to carry them out.

2.9. Training

The Funder will want to ensure that the Broker has a scheme in place whereby its staff are trained not only on the agreements and products specific to the Funder but also to the wider implications of the relationship such as the impact of the FCA, a trade association or the Funder on the way in which the Broker is obliged to act. The communication of this to operational staff is vital if the Broker is to maintain its compliance obligations.

The Funder will want to see that the Broker implements a training programme across all levels of staff and that such a programme is more than just a one-off induction session at the point of employment. The Funder would expect to see that training is an ongoing objective throughout employment and that existing training is repeated by way of refresher sessions to update and reiterate certain vital topics (for example on data protection). New training should be given on topics relevant to a person's job role in relation to any changes to regulations which impact on their position.

Training might be given by internal or external providers or by way of an online provider. The Funder may well ask for evidence of the delivery of this training and therefore registers should be taken noting who has completed the training successfully. It would also be advisable to run tests on the employees now and again to ensure that they have understood the training that they have received and are confident that they are competent to carry out the role for which they are employed.

The Funder may ask to see the Broker's 'training and competence' plan. This plan should include evidence as to the attainment, maintenance and supervision of competence for each staff member including senior staff and approved persons. The training plan should demonstrate that each individual in the firm is assessed on a regular basis against a disclosed standard and preferably against a balanced scorecard which includes such matters as customer satisfaction, technical knowledge, skills and expertise, an understanding of the marketplace in which the Broker operates, the ability to identify and describe the key features of each product to which the staff member is exposed, and a basic understanding of the regulation and legislation surrounding it.

The NACFB will support in providing a set of professional education standards/syllabus which would include Cert BB & C or other similar qualifications to cover basic competence. It will also outline a timetable of when this should be completed.

The NACFB will also support the delivery of a learning management system to record qualifications and monitor Members competence through a suite of CPD Modules that is both mandatory to meet the regulators expectations and standards but also educational to assist the personal development of the Member. The Association will also continue to work with its Funders to provide additional learning material which can be available online as well as at local facilitated events by the NACFB.

SECTION B – Customer Interaction/Sales Process

2.10. Documentation

Brokers will be expected to ensure that they meet the status disclosure requirements set out in GEN in any relevant material presented to a customer. This includes disclosure on any stationery. Stationery includes letterheads, business cards and compliment slips as well as the Broker's website and other promotional materials.

Each Broker should have in place a compliant disclosure document. This document will be reviewed to ensure that it meets the regulatory requirements.

Where applicable, a standalone 'Credit Information Notice' must also be in place and will form part of the compliance review. The Credit Information Notice (CIN) applies where the Broker takes a fee from the customer. The Credit Information Notice contains prescribed information. Brokers should check with their Funder to ensure that the Funder permits a fee to be taken by the Broker from the customer. The trading agreement between the Funder and the Broker may expressly forbid this and allow the Funder to terminate the relationship should this occur. An example of a CIN form is attached in Appendix 3.

The Broker should ensure that it can provide to the customer a further disclosure document which describes to the customer the extent of the Broker's powers and their status which should also include confirmation as to whether the Broker works independently or exclusively for one Funder or whether they have relationships with many Funders. This disclosure must also be made in any Financial Promotions as defined in CONC 3 of the FCA Handbook.

2.11. Communications and dealings with Customers

i. Money Laundering and KYC

Know Your Customer (KYC) checks and money laundering checks must be undertaken by the Broker to ensure the customers who they propose to the Funder are verified. It may be that the Broker will simply be required to collect information from the customer and send it to the Funder for them to complete these checks.

A Funder may also ask the Broker to collect other documentation, such as documentation evidencing affordability, and the Funder may negotiate directly with the Broker as to its willingness and ability to provide the Funder with compliant assistance in this regard.

ii. Agreements and Products

The Broker should evidence compliance with all the key stages of contract formation with a customer from pre-contractual disclosure, responsible lending and affordability checks through to the presentation of the finance agreement. It is vital for the Funder that the Broker is able to evidence that it has provided the customer with all the relevant paperwork and documentation which they are legally entitled to receive prior to, during and after the agreement has been entered into where such responsibility has been delegated to the Broker to do so. This might be evidenced via the use of a checklist that is kept on file for each deal and submitted to the Funder with the final signed documentation pack. This will also help with any customer disputes or complaints that might be raised later on.

The Broker must also have knowledge of the products that it is selling and ensure that it only sells a product that meets the customer's needs and is suitable. The Broker should document the products that he has discussed with the customer, what product(s) were recommended and why, what product the customer selected, why it was selected and why it was accepted that the product selected meets the customer's needs and is suitable for the customer's purposes.

The Broker may have the responsibility of explaining the key features of the agreement, the risks attached and the financial obligations thereunder so that the customer can make an informed choice as to whether or not they wish to proceed. The customer may ask the Broker questions at this time and the Broker should answer these carefully, thoroughly and properly. A record should be made of any questions and any responses given and forwarded to the Funder for their information.

The Broker should advise the customer to read, and allow the customer time to consider, the pre-contractual documentation in relation to the agreement before the customer formally enters into it. The Broker should also record that it has done so.

The Broker should consider methods by which it can evidence all of these points to the Funder, the FCA, a trade association, FOS or indeed by the customer themselves.

Similar checks may be carried out to assess the Broker's approach to other regulated products which may be sold alongside the main credit product or agreement.

The Broker should understand that where insurance is offered, new FCA requirements apply as to the selling of insurance products and the Broker must be able to demonstrate that it has knowledge of and complied with these requirements. For example, the customer must be made aware that other products on the market exist, the customer is free to obtain other quotes and that it is not mandatory for the customer to enter into the extra products being offered for sale by the Broker in order to enter into the agreement.

iii. Mental Health and Vulnerability

The Broker will need to demonstrate how it identifies such customers and then manages them in line with the mental capacity and vulnerable debtor requirements and guidance set out by the FCA and bodies such as the Money Advice Liaison Group (MALG), the Royal College of Psychiatrists and the Money Advice Trust. The Broker should ensure that if the customer does not appear to understand what is being communicated to them that the Broker will take further steps to help the customer understand and consider the information and will also give the customer more time where it is required to consider the information. The Broker should ensure that any concerns as to the customer's mental health or vulnerability are communicated to the Funder and that the Broker confirms to the Funder the steps taken by the Broker to mitigate any risks that may result from this and the justification that the transaction with that customer can proceed without compromising the customer. Checks may be carried out by the Funder to ensure Brokers have these processes and procedures in place to identify and deal with people who have a mental incapacity or are considered as being vulnerable customers.

iv. Refinancing

If a Broker is asked by the customer to refinance a product or existing equipment then the Broker will be expected to assess the suitability of proposing such a refinance to the Funder and consider the circumstances which are driving the customer to make such a request. For example, the Broker should ensure that there are no suggestions that a customer is struggling financially to meet their obligations in relation to their existing agreement(s) in relation to the equipment and/or more generally and that therefore a refinancing deal may disadvantage them further. If refinancing is agreed then the Broker may need to communicate to the customer the features of that refinancing particularly those that the customer may not fully appreciate. For example the fact that although the repayments are lower the duration of the agreement might be longer or the total amount payable might be higher due to extra interest incurred because of the longer term. A Broker should ensure that they do not encourage a customer to take out additional credit or extend the term of an existing agreement where this might cause detriment to the customer.

This applies to regulated agreements but Funders might require that this approach is equally followed for unregulated lending.

The Broker should document any conversations it has with the customer in this regard and pass this information onto the Funder at the point the deal is proposed.

2.12. Complaints Handling

The handling of complaints, not just by the Broker, but between it and the Funder is a key consideration for the Funder, particularly with regards to its own obligation to treat customers fairly and in relation to the FCA's reporting requirements on complaints.

The Funder will want to ensure that the Broker has a complaints-handling policy and procedure in place and that it is reporting its complaints accurately to the FCA at the appropriate time. The Funder may ask to see a copy of the Broker's report in this regard.

The Funder may also look to see whether the Broker has a complaints register, what its internal policy says in relation to complaints and what procedures it has in place in relation to training. The Funder will want reassurance that there is a specialist individual or team within the Broker who handle customer satisfaction issues and complaints.

The Funder will also want to ensure that the Broker is disclosing to the customer correctly its procedures in relation to complaints and how the customer can complain should they need to. The Funder will want to ensure that the Broker is fully aware of and acting in accordance with the requirements of the Financial Ombudsman Scheme (FOS) where applicable and that they are notifying the customers of their rights in relation to FOS.

The Broker should ensure that it has the capacity and ability to provide the Funder with accurate and up to date management information (MI) on complaints should the same be requested.

The Funder also is likely to want to come to an agreement with the Broker in relation to when each party can pass to the other a complaint and how each party should assist each other in resolving such complaints.

2.13. Record Keeping

Funders will expect Brokers to keep adequate records of all of their operational and business activities particularly those relating to compliance with the FCA requirements.

If a Broker keeps paper records of such matters, these should be kept securely and organised in such a way that they can be easily identified and accessed should the same be necessary.

If the Broker maintains computer based records, these should be backed up and saved in such a way that they are easily retrievable, perhaps through the use of an online filing system with adequate password protection and a system of screening for those who are allowed access.

Data security and data protection measures should be evident.

2.14. FCA reporting

The FCA collects data from all regulated firms on a regular basis. The information they collect is to help identify trends and emerging risks and to monitor compliance. All regulated firms are required to report information to the FCA. This must be provided online on a regular basis – typically six monthly or annually depending on the nature and size of your business. The data is mostly financial information and information about transaction volumes.

Pursuant to Principle 11, authorised firms are expected to cooperate with the FCA and disclose all and any information requested or anything of which the FCA could reasonably expect to have been notified.

GABRIEL (Gathering Better Regulatory Information EElectronically) is the online regulatory reporting system for the collection, validation and storage of firms' regulatory data. Once a firm is authorised it must register on GABRIEL. The system will select the reports firms needs to complete, based on the information the firm has provided to the FCA. The firm will receive an email reminder when the report is due. Regulatory reporting is essential and firms not completing their reporting requirements by the due date are subject to an administrative fee of £250. If a Broker still does not complete and submit its return, the FCA may take enforcement action against it. Ultimately, this could result in the Broker losing its authorisation. A Schedule is given on GABRIEL showing when reports are due and the rolling reporting requirements over the next 12 months.

The Broker may be subject to checks surrounding their reporting schedules and an assessment carried out to ensure the Broker is correctly and promptly submitting these reports via the GABRIEL reporting system. This may include the Funder checking on the returns which are submitted or scheduled to be submitted to the FCA.

In addition, some areas that the Broker will also be required to report on are:-

- Change of address/name
- New or withdrawn approved persons
- Change of shareholding
- Information relating to approved persons
- Change in ARs

Brokers should ensure that they are familiar with their reporting obligations at all times. Brokers must diarise their reporting dates and ensure they submit any returns due in good time. Brokers must ensure that they leave enough time before the return due date to collate all the financial information which may be required to be submitted to the FCA in that return and keep records of what reports have been submitted so as to evidence these if necessary.

If a Broker has permission to carry on only credit-related regulated activities and has revenue arising from those activities that do not exceed £5,000,000 a year, the Broker must provide the FCA with a complete report concerning complaints received from eligible complainants once a year. Otherwise twice a year a firm must provide the FCA with a complete report concerning complaints received from eligible complainants. The report must be set out in the format in DISP 1 Annex 1R. A Broker with only a limited permission is required to submit information to the FCA about the number of complaints it has received in relation to credit-related activities under the reporting requirements in SUP 16.12 (completion of data item CCR007).

2.15 General

This list is by no means exhaustive. Funders, Trade Associations and the FCA will have discretion to carry out many different forms of review on their Broker partners. It is important, therefore, that the Brokers have a full understanding of the requirements of all three categories of relationships and the regulatory and legal requirements which sit around these relationships.

Part 3 – Types of supervision

3. Types of supervision by the funder

a. Regulatory Compliance Questionnaire and Declaration (“Compliance Questionnaire”)

Brokers may be required to complete a Compliance (Attestation) Questionnaire in which there will be a variety of questions designed to enable the Funder to capture a high level overview of the Broker’s compliance position as attested by the Broker itself and signed off by the appropriate representative at the Broker.

This Compliance Questionnaire may ask for certain documents to be attached. Such attachments may include copies of selective policy documents and copies of reports filed or MI collected.

The completion of this Compliance Questionnaire might be the first step of engagement with that Broker, may form the first step of an audit or review, or may simply be used as a means of informing the Funder of the Broker’s compliance position on an annual basis so as to ensure the Funder holds up to date and accurate records. The Funder may use the responses given by the Broker to determine whether a visit to that Broker is necessary. The Funder may use the Questionnaire as one of the tools on which it will rely to allocate the Broker a risk status. The risk status will in turn determine the level of ongoing support, development or review which the Funder will undertake in relation to that Broker. .

The results of customer surveys will sometimes feed into the Broker’s remuneration and reward package so as to encourage the Broker to behave in a way which is in the customer’s best interests at all times by linking that customer’s satisfaction to the remuneration a Broker will receive. Funders are implementing sales incentives that are subject to a balanced scorecard which contain reference to measurements or a score in relation to customer assessment and feedback about the Broker. It is no longer permitted for Brokers to be rewarded or targeted based solely on sales figures. This is largely due to the fact that treating customers fairly is such an important principle of the FCA.

b. Mystery Shopping

Funders may utilise mystery shoppers to assess the performance of a Broker’s frontline staff. This could be an undisclosed sales assessment by a Funder or their auditor who presents himself/herself as a customer to check that the sales process being followed is compliant and as it should be implementing the training and demonstrating that the systems and controls which the Broker has in place to ensure it acts compliantly at all times is working. Where it is identified that these systems and controls are failing, then areas of training will be identified and the Broker is likely to receive feedback from the Funder who carried out the assessment with recommendations for improvements and/or to request a meeting to discuss what better systems and controls the Broker should have in place and how they can demonstrate the implementation of these.

Part 4 – Supervision by the FCA

4. Supervision by the FCA

It is important for Brokers to understand that the FCA will be responsible for supervising the Broker and the Broker must therefore take responsibility for ensuring its own standards and behaviour are compliant and maintained.

The FCA will allocate each Broker a supervision classification. This classification will determine how closely the Broker is supervised. The FCA begins by categorising all regulated firms into two categories for the purpose of supervision:

Fixed portfolio firms: these firms are among the largest the FCA supervises and represent only a small proportion of the firms supervised by the FCA. They either have very large numbers of retail customers or are wholesale firms with a significant market presence. They are subject to an intensive level of conduct supervision and have an ongoing proactive relationship with a dedicated team of FCA supervisors (each firm has a named individual supervisor), who are interested in a range of areas at every level of the firm's business. They are proactively supervised using a continuous assessment approach. In its direct contact with fixed portfolio firms the FCA will examine the firm's business model, operations and the culture behind them to identify and deal with emerging risks. It engages with people across the business, asking different questions in each area to assess their impact on consumers and markets. Feedback is provided to the firm on an ongoing basis through the regular engagement between the FCA and the firm, on a firm-specific or sector-wide basis.

Flexible portfolio firms is a term which represents the majority of firms supervised by the FCA, and this term is likely to be applicable to Brokers. These firms are subject to event-driven reactive supervision and thematic issue or product supervision only. They are supervised through a sector-based approach, with firm-specific engagement determined by the FCA's risk assessment and prioritisation model. These firms will be supervised through a combination of market-based thematic work, as well as communication, engagement and education activity aligned to the key risks the FCA has identified for the sector. They do not have a named supervisor; their first point of contact will be through the FCA's Contact Centre, which has the expertise to deal with most queries, and will pass issues on to the appropriate FCA specialists when necessary. The FCA will provide flexible portfolio firms with direct feedback when dealing with particular events. After thematic work it will issue feedback on a sector-wide or firm-specific basis, as appropriate.

Brokers must at all times consider Principle 11 of the FCA Handbook which requires you to be open and honest with the FCA and report accurately and promptly to the FCA anything which the Broker may consider the FCA should reasonably be notified about. Failure to do so will leave the Broker in breach of this Principle and potentially subject to disciplinary or even legal action.

The FCA further categorises all the firms for which it has responsibility into four categories, P1, P2, P3 and P4, with P1 firms subject to the most intensive prudential supervision and P3 firms the least.

The FCA's prudential supervisory activities will ensure that:

Firms maintain adequate financial resources in line with legal requirements

The FCA has early warning of financial issues that could drive behaviours that endanger a firm's compliance with conduct, financial crime, client assets and other core regulatory standards

Any wind-down of a firm could happen with little or no damage to markets and consumers.

P1 firms	Firms and groups whose failure could cause significant, lasting damage to the marketplace, consumers and client assets, due to their size and market impact. This might be the case for example, because a particular market is highly concentrated, so that a disorderly failure of one player could not easily be assimilated by the others.
P2 firms	Firms and groups whose failure would have less impact than P1 firms, but would nevertheless damage markets or consumers and client assets. This might be the case where there is a smaller client asset and money base or an orderly wind-down can be achieved.
P3 firms	Firms and groups whose failure, even if disorderly, is unlikely to have a significant market impact. They have the lowest intensity of prudential supervision.
P4 firms	Firms with special circumstances (for example, firms in administration) for which bespoke arrangements may be necessary.

It is likely that the majority of Brokers will be classified as a P3 firm. The FCA has explained that it monitors P3 firms in one of two ways:

1. Reactively, through an alerts-based system that enables it to identify and deal with firms that have breached their prudential regulatory requirements.
2. Against minimum requirements: the FCA will only increase its supervision when a firm is close to failure or failing.

The FCA have a wide range of powers which it is given to enable it to take action against those Brokers who it considers are not performing compliantly. These powers are set out within the FCA Handbook, under the Regulatory Processes section and are contained in the Decision Procedure and Penalties Manual (DEPP) and further in the Regulatory Guides section, in The Enforcement Guide. Full details of the powers given to the FCA to discipline or take other action are contained within this manual. However, in brief, the FCA can issue public censures or statements and impose potentially unlimited financial penalties. Other sanctions include varying or cancelling a firm's permission under Part 4A of the Financial Services and Markets Act 2000 (FSMA), intervening against an incoming EEA or Treaty firm, suspending or restricting a firm's Part 4A permissions, suspending or restricting the approval given to an approved person, prohibiting an individual from performing regulated functions, withdrawing the approval of an approved person, and imposing a penalty on a person who has performed a controlled function without approval.

In overview, the steps of a disciplinary process commonly undertaken by the FCA may be summarised as follows:

The FCA will decide whether to refer a case to the Enforcement and Market Oversight division for investigation. It will generally take a number of criteria into account and staff from the referring department and the Enforcement and Market Oversight division will work together to reach a decision.

A referral is made to the Enforcement and Market Oversight division, investigators are appointed and scoping discussions with the firm or individual begin.

At the end of the investigation stage a preliminary findings letter, usually together with a Preliminary Investigation Report (PIR), is sent by the Enforcement and Market Oversight division to the person under investigation.

If the Enforcement and Market Oversight division decides to proceed, the matter is submitted to the decision maker (in most enforcement actions this will be the Regulatory Decisions Committee (RDC)).

A warning notice is issued if the RDC (or other decision maker) considers it appropriate. The recipient of a warning notice, generally, has 14 days in which to respond and make representations to the FCA. During this period, the person under investigation may decide to settle the case or enter into mediation with the FCA. If this process is successful, the formal disciplinary process comes to an end.

Following the expiry of the 14-day period for making representations, the RDC has a further reasonable period to decide whether to issue a decision notice.

A decision notice is issued or notice of discontinuance given.

Following the service of a decision notice, the recipient has 28 days in which to make a referral to the Upper Tribunal.

A final notice is issued either:

- after the 28-day period has expired and no reference has been made to the
- at the end of any proceedings which have been initiated in the Upper Tribunal.

The level and amount of any fine imposed by the FCA will be determined by the nature, impact and seriousness of the breach by the Broker. There is, in appropriate cases, a sliding scale of penalty tariffs which are linked to financial revenue of the relevant firm being disciplined. Having calculated the "relevant revenue" figure, the FCA will then decide on the percentage of that revenue which will form the basis of the penalty. A five-level scale has been introduced for this purpose and the FCA will select a level in proportion with the nature, impact and seriousness of the breach. The more serious the breach, the higher the level. The scale is as follows (DEPP 6.5A.2G(3)):

Level 1: 0%.

Level 2: 5%.

Level 3: 10%.

Level 4: 15%.

Level 5: 20%.

The early settlement discount scheme allows for the application of a fixed discount to the penalty if paid early in the enforcement process.

The FCA also has significant powers under Financial Services and Markets Act 2000 to prosecute a number of criminal offences (sections 401 and 402). This criminal action includes prosecution against those who are carrying on or purporting to carry on a regulated activity without authorisation or exemption, holding themselves out to be authorised, failing to cooperate or giving false information to the FCA, failing to comply with the statutory requirements as regards changes of control over authorised persons and misleading the FCA.

The FCA in its Enforcement Guide (EG) says that its general policy is:

"to pursue through the criminal justice system all those cases where criminal prosecution is appropriate" (EG 12.2).

Brokers must therefore ensure that they are acting compliantly.

It is important that Broker's also comply with the notification requirements set out in SUP 15 of the FCA Handbook. Brokers must ensure that they:-

- update core information about the firm to include contact details, appointed representatives, staff in key roles;
- notify matters with a serious impact including failure to satisfy threshold conditions or matters that might have a significant adverse impact on the firm's reputation;
- notify any breach of the FCA rules or requirements to include any fraud, error, irregularities, insolvency, bankruptcy and winding up.