

## Tiny Online

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**From:** "APPONYI" <amsa@btconnect.com>  
**To:** "Meryl Morgan" <Meryl.Morgan@morgan-cole.com>  
**Cc:** "Toby Tyler" <Toby.Tyler@morgan-cole.com>  
**Sent:** 18 January 2007 16:20  
**Subject:** Estate Agents and Credit Brokerage Licence

Meryl

Please proceed on the basis that Introducers must have a Credit Brokerage Licence.

Anthony Apponyi  
Direct Line: 01491 641362  
Email: [amsa@btconnect.com](mailto:amsa@btconnect.com)

Chain Mender Limited  
Chiltern House  
45 Station Road  
Henley-on-Thames  
Oxfordshire RG9 1AT  
Telephone: 0870 067 5889

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----- Original Message -----

**From:** [Meryl Morgan](mailto:Meryl.Morgan@morgan-cole.com)  
**To:** [amsa@btconnect.com](mailto:amsa@btconnect.com)  
**Cc:** [Toby Tyler](mailto:Toby.Tyler@morgan-cole.com)  
**Sent:** Thursday, January 18, 2007 11:21 AM  
**Subject:** Estate Agents and Credit Brokerage Licence

<<2007 01 18 mdm md - credit brokerage - advice note.doc>>

Anthony,

I confirm our recent telephone conversations. As Chain Mender is not a Regulated Mortgage Contract (as defined by the Financial Services and Markets Act 2000 ("FSMA")) and could be used to purchase land to be occupied by a borrower or his relative as a home, the estate agents would need credit brokerage licences now (even though Chain Mender is currently not regulated by the Consumer Credit Act 1974 ("CCA") as the credit provided is more than £25,000).

Chain Mender Limited will not need a CCA licence until 6th April 2008 when the current £25,000 limit for CCA agreements is generally abolished.

We have discussed Chain Mender Limited establishing a company to act as a "middle man" between the estate agent and Chain Mender Limited so that the estate agents would submit the completed application forms to the middle man and then the middle man would submit them to Chain Mender Limited. This submission of the completed application forms by the estate agents to the middle man still constitutes credit brokerage as there is direct communication between the estate agents and the middle man. The only possible exception is if the middle man is a "qualifying broker" (ie a person who can introduce a RMC to a source of credit without contravening FSMA) **and** the product which he is introducing is a RMC. As Chain Mender is not a RMC, this middle man exception will not work.

Accordingly, each estate agent will need a credit brokerage licence now to offer Chain Mender, unless you restrict the use of Chain Mender so that no element of it could be used to purchase another home for a borrower or his relative. Please note however, that even if you restrict Chain Mender in this way, the estate agents will need credit brokerage licences for Chain Mender from 6 April 2008.

A more detailed advice note is attached for your information. Please let me know how you wish to proceed.

Regards,

Meryl.

Meryl Morgan | Partner | **Banking**  
D.Line: 02920 385 442 | D.Fax: 02920 385 478  
Email: [meryl.morgan@morgan-cole.com](mailto:meryl.morgan@morgan-cole.com)



### Chain Mender Limited – Advice Note

#### Advice Required

Can Chain Mender Limited use an intermediary broking company so that no credit brokerage licence is required by estate agents for Chain Mender.

#### Answer

If the estate agents introduce work to an intermediary broker, they will still be deemed to be a credit broker unless they come under one of the following two headings:

1. The estate agents are only advertising the services of the intermediary broker (i.e. not introducing the prospective customers to the intermediary broker); or
2. The intermediary broker qualifies as a 'qualifying broker' under s.146(5A) CCA.

If the estate agents do not fall within one of the above headings, they will require a consumer credit licence.

In point no.1 (above), advertising will allow the estate agents to supply the application forms and help the potential debtors fill them out. Provided the potential debtors then send the forms to intermediary broker themselves, the estate agents will not be deemed to be a credit broker. This is because there was no direct communication between the estate agents and the intermediary. If however the potential debtors hand back the completed forms to the estate agents to forward to the intermediary broker, then they will be acting as a credit broker.

#### Research

##### General Rule

Credit brokerage includes the *effecting of introductions* of individuals desiring to obtain credit to *other credit brokers* (s.145(2)(c) CCA). It is therefore possible for a 'chain' of credit brokers to exist. Goode gives the example of where a professional adviser (e.g. solicitor or accountant) introduces a client to a mortgage broker who, in turn, effects an introduction to a lender. In this example the professional adviser would be a credit broker<sup>1</sup>.

There is however an exception to this rule in s.146(5A) of the Act, which states that it is not credit brokerage for a person to effect the introductions of an individual desiring to obtain credit if the introduction is made to a qualifying broker.

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<sup>1</sup> Notes to s.145 in Goode, [IC ]



The general rule raises further questions:

1. What is 'effecting of introductions'?

Before credit brokerage occurs, 'introductions' must be 'effected'. There are however no definitions for these terms in the CCA 1974. Generally it is thought that to effect an introduction there must be communication (whether personally, by correspondence, by telephone or any other manner) between the prospective debtors, prospective creditors and credit brokers<sup>2</sup>. As there is no statutory definition, it has therefore been left to the court to decide what constitutes 'introductions' for the purposes of s.145 of the Act.

It has been held that advertising is not introducing. Advertising the services of creditors will not generally constitute credit brokerage as it does not introduce the customer to the creditor. This was held in *Brookes v Retail Credit Cards*<sup>3</sup> where a company displayed a sign in its shop offering instant credit on behalf of RCC. The company also provided display boxes containing leaflets and application forms. These actions were not held to be credit brokerage.

Although giving forms does not constitute credit brokerage, if the forms are then completed and handed back to the trader for transmission to the creditor or intermediary broker, this will be credit brokerage since the trader is effecting an introduction as there is direct communication<sup>4</sup>. If the potential debtors send the application forms themselves, then there is no direct contact and therefore no introduction.

2. What constitutes a 'qualifying broker'?

Section 146(5A) CCA states that it is not credit brokerage for a person to effect the introduction of an individual desiring to obtain credit if the introduction is made to a qualifying broker.

A qualifying broker is defined in s.146(5D) CCA as a person who may effect introductions of the kind mentioned in subsection (5A) without contravening the general prohibition, within the meaning of s.19 FSMA 2000 (i.e. no person may carry on regulated activity in the UK unless he is an authorised person or exempt).

We do not believe Chain Mender's intermediary broker will be deemed a 'qualifying broker' as it will not be effecting introductions in relation to *relevant agreements* (meaning an agreement which is secured by a land mortgage, where entering into that agreement as lender is a regulated activity under the FSMA 2000<sup>5</sup>).

18 January 2007

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<sup>2</sup> Goode "*Effecting of Introductions*"

<sup>3</sup> (1984) 148 J.P.N 652

<sup>4</sup> Goode "*Effecting of Introducers*" and "*Indirect introducers*"

<sup>5</sup> Definition given in s.146(5D) CCA 1974