

# **REPORT FROM GREEN DEAL PROVIDERS GROUP**

## **CONSUMER CREDIT LEGISLATION WORK GROUP**

### **OBJECTIVES OF WORK GROUP**

The objectives for Work Group were initially set out to examine the detail of CCL. Consideration was given to the following:-

- Clarification of category of licence – Is a GDP a Lender? What category of licence is necessary?
- The CCL legislative obligations and where they arise in a Full Green Deal Transaction
- Viable operating models for handling of financing with OFT. What impact does CCA legislation have on the GD journey?
- Information on the process for Licence application, the expected process and timeline for issue.
- Paperwork. ECCL, lending agreements, alignment of GD loans.
- Assess general guidance available to the wider GDP market on CCL obligation and process.
- Examine risk of perceived mis-selling of finance in the market mitigated. What impact will credit and affordability checks have? Where does the 'financial advice' start in a GD transaction?

Two structured workshops were held each with DECC and OFT in attendance. The meetings were attended by a wide cross section of potential GDPs including merchants, retailers, energy companies, construction companies and social housing providers. The group was also supported with external financial and legal advice.

### **BACKGROUND**

#### **Outline of a Green Deal Transaction: From DECC consultation**

The Green Deal Plan - Contract which sits between  
the Green Deal provider  
the improver and  
bill payer (if different)  
at the property.

The plan is for energy efficiency works and finance, and as set out in the Act and framework regulations, certain conditions must be met in order for the plan to qualify as a Green Deal Plan – with the effect that the obligation to pay instalments passes from bill payer to bill payer.

- Accessed via GDP – key relationship with consumers.
- Financing for defined energy measures and installers.
- Initiated via an independent energy assessment of the home.
- Golden Rule Calculation.
- Credit Check vs. consumer identification validation.
- Consents – Bill payer, tenant, property owner.
- Repayment via Energy Bill.
- Loan tied to energy meter and transfers with building ownership.

Green Deal providers will need to be licensed by the Office of Fair Trading (OFT) under the CCA, in addition to being authorised in relation to Green Deal.

## **PROCESS**

- The Group considered the obligations placed on a lender in a CCA transaction. The CCA requires a lender to:
  - provide adequate pre-contract explanations to the consumer
  - disclose information about the status of the lender and any relevant third party arrangements including charges
  - test the creditworthiness of the consumer
  - monitor Affordability
  - provide the loan agreement and copies in CCA compliant terms (inc SECCI)
  - calculate the APR
  - comply with the form of advertisements for credit requirements
  - provide on-going account management including allowing early settlement provisions except as varied by the Green Deal provisions in the Energy Act 2011
  - deal with complaints.
  
- **Feedback was received from the OFT**
  - GD loans are covered by CCL legislation - OFT sees the loan as unsecured lending to an individual (i.e. the bill payer ) with specific rules over portability of the loan to future energy bill payers (created by energy act 2011). OFT view is that the loan does not reside with energy meter.
  - OFT view is that the lender will need category A licence with lending in the home stipulated and also will be categorised as high risk.
  - The Credit Agreement will be a standard consumer credit agreement with a green deal specific overlay. The agreement is an unsecured lending agreement on the individual.
  - Transfer of loan across bill payers is not a new credit agreement, provided the terms of loan do not change. Therefore the GDP does not have to complete a new application \ credit check, however there is still an affordability obligation for the GDP under CCA.
  - There is an obligation under CCL for an affordability review with loan payer. There remains an issue as to how GDPs can meet this requirement. OFT did not stipulate that the golden rule meets the affordability obligation of the CCL.
  - There is still no absolute clarity on what the statement requirements and subsequent DPA issues are with transfer of loan? Or how a GDP can meet these?

## **DISCUSSIONS**

Category of CCA licence - there are still differing views between some GDP's and DECC on what licence is required. Currently DECC advice is that Cat A is necessary. GDPs are unsure how to progress, but this could put a level of risk of into market - perceived mis-selling risk?

An issue was found with the CCA cat A licence:- This may cause issue on exempt VAT supply (interest) and subsequent impact on input VAT for GDP 's and their VAT groups. This needs further clarification, particularly in that it could be a barrier to entry given the extra cost to operate this could add.

There may also be an issue with CCA Cat A in that it may cause an issue on treatment of GD debt and subsequent action to take off balance sheet via selling / selling receivable. Process must pass a de-recognition test under IAS39. Again this needs clarity and could be another barrier to entry for GDP's.

The wider GDP market's general understanding is that GD is not a personal unsecured loan – whereas the OFT definition is that it is unsecured personal lending with specific terms on transference with obligation to pay energy bill. Misunderstanding will cause issues in the market and adoption of the Green Deal – especially as the documentation will replicate unsecured lending documentation.

**Credit check** - Will be needed by GDP to meet CCA obligation and individuals could be refused GD loans. Again, this is not widely recognised in the GDP market. This obligation is not met by the energy supplier debt check or passing a golden rule calculation.

**Affordability** - The on-going obligation will be addressed in DECC guidance. The energy company should be able to meeting GDP requirements, however, this does not discharge the GDP obligation to monitor affordability of a GD loan on-going.

**Information provision requirement** - Under CCA opening, anniversary and closing statements are required to be passed to debtors by lenders. Statement provision could add significant complication and overhead to GD providers, in particular where a GD loan has multiple creditors over its term e.g. tenanted property. Statements could also raise DPA issue if incorrectly issued

**Early Settlement** - DECC are circulating guidance on early settlement of GD loans and the mechanic for charging compensation from customer for early settlement. Calculation is simple but involves “opportunity cost” adjustment, which can be complex and is open to challenge.

**Assessment** - The understanding from GDP's is that the golden rule / possible savings output within a GD assessment is not covered or integrally part of the CCA process for a GDP. As yet this has not been confirmed.

**Non CCA compliant loans** – A property may transfer from commercial to residential use during its life e.g. pub converted to a home. The loan may not be originated under CCA (correctly) but may become CCA regulated. GDPs are concerned as to how to deal with this situation. If the GDP thinks that a loan is likely to fall within the remit of CCA then the loan should be treated as such from the outset. More guidance will be required for the wider GDP market.

### **NEXT STEPS**

Key issues still remain for resolution.

Works that is underway within the DECC JFFG / GDAA drafting process and also the definition of service provision from TDGFC is contributing towards solution.

Further work will be progressed under these groups with input and representation from GDFG.

GDPs will need to ascertain their own position on CCA obligation and should take specialist advice in doing so.