

PERIMETER GUIDANCE (REGULATED ADVICE) INSTRUMENT 2013

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the powers in section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000.

Commencement

- B. This instrument comes into force on 8 November 2013.

Amendments to material outside the Handbook

- C. The Perimeter Guidance manual (PERG) is amended in accordance with the Annex to this instrument.

Citation

- D. This instrument may be cited as the Perimeter Guidance (Regulated Advice) Instrument 2013.

By order of the Board of the Financial Conduct Authority
7 November 2013

Annex

Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1.5 What other guidance about the perimeter is available from the FCA?

1.5.1 G ... These documents, and the URL on which they may be accessed, include:

... ~~...~~ ; ~~and~~

- (9) *guidance* for employers about how to provide advice and information to their employees on pension matters without contravening the *Act* – <http://www.fca.org.uk/your-fca/documents/fsa-promoting-pensions-employees>;
- (10) FCA “Factsheet for Broker-arranged premium finance plans: General insurance brokers acting for commercial customers” which includes discussion about whether arranging premium finance is a *regulated activity* (www.fca.org.uk/your-fca/documents/broker-arranged-premium-finance-plans);
- (11) joint guidance by the FSA and the Office of Fair Trading titled “Payment protection products” (January 2013) which includes discussion whether debt freezes and debt waivers are *contracts of insurance* (www.fca.org.uk/your-fca/documents/finalised-guidance/fsa-fg132); and
- (12) the FSA’s views on whether members of the NHBC who provide insurance to buyers of properties in accordance with the Buildmark scheme carry out *insurance mediation*, contained in a letter to NHBC’s solicitors and put onto the FSA’s Freedom of Information Act register in December 2012 (www.fca.org.uk/your-fca/documents/fsa-foi2707-request-information).

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4.6 Advising on regulated mortgage contracts

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4.6.6 G ~~Advice would not relate to a particular contract if it consisted of a recommendation that a *person* should take out a mortgage with ABC building society without (expressly or by implication) specifying what kind of mortgage. Advice relates to a particular contract if it recommends that a *person* should take out a mortgage with ABC Building Society without (expressly or by implication) specifying any particular ABC Building Society mortgage because it steers the customer towards specific identifiable mortgages and away from all others. The advice is essentially saying that there is a feature of each individual ABC Building Society mortgage that makes it better than a mortgage from any other lender. Advice may be regulated even though it relates to more than one possible mortgage. Advice also relates to a particular contract if it recommends that a *person* should not take out a mortgage with ABC Building Society.~~

4.6.7 G Typical recommendations and whether they will be regulated as advice under article 53A of the *Regulated Activities Order*

This table belongs to *PERG* 4.6.5G and *PERG* 4.6.6G.

Recommendation	Regulated or not?
...	
I recommend you take out (or do not take out) an ABC Building Society fixed rate mortgage.	This will depend on the circumstances. If, for example, the society only offers one such mortgage, this would be a recommendation intended implicitly to steer the borrower in the direction of that particular mortgage which the borrower could enter into and therefore would be advice. Yes. See <i>PERG</i> 4.6.6G.
I suggest you take out (or do not take out) a mortgage with ABC Building Society.	No. This is not advice which steers the borrower in the direction of a particular mortgage which the borrower could enter into. However, if the society only offers one mortgage, this would be a recommendation intended implicitly to steer the borrower in the direction of that particular mortgage which the borrower could enter into and therefore would be advice. Yes. See <i>PERG</i> 4.6.6G.
...	

...

Further examples of what is and is not regulated advice

- 4.6.33 G The table in PERG 4.6.34G sets out some further examples of typical situations and whether they involve regulated advice under article 53A of the Regulated Activities Order.
- 4.6.34 G Further examples of what is and is not regulated advice
This table belongs to PERG 4.6.33G.

<u>Example of what lender says and does</u>	<u>Regulated or not?</u>
<u>(1) The <i>firm</i> says “We have a wide range of mortgages, including fixed and variable rates. Here are some leaflets which set out the main features.”</u>	<u>No. Leaflets that just explain the terms and conditions of a lender’s products are not advice (see PERG 4.6.15G(1)).</u> <u>Even if the leaflet contains promotional material, merely handing over the leaflet does not mean that the <i>firm</i> is giving advice.</u>
<u>(2) The <i>firm</i> says “We have a wide range of mortgages, our best rates are two-year fixed rates, you might want to look at those.”</u>	<u>Yes. The <i>firm</i> has identified specific products that it offers and is steering the customer to those products.</u> <u>Identifying which products have the lowest rates is not advice on its own, only facts. However, “best” involves a value judgment, particularly when a comparison is made with other products that have different periods for which interest is fixed or that have variable interest rates.</u>
<u>(3) The <i>firm</i> says “In order to provide you with an illustration, I need to know how much you want to borrow, the term and the property value. Which product or products would you like an illustration for?”</u>	<u>No. The <i>firm</i> is collecting factual information to provide the customer with an illustration of costs.</u>
<u>(4) The <i>firm</i> says “Based on what you’ve told me I think you would be best to look at two-year fixed rates. Here is some information about our products.”</u>	<u>Yes. The <i>firm</i> has made a judgment on what type of product is best for the customer and has identified specific products of that type that it offers.</u>

<p>(5) <u>The <i>firm</i> says “Our fixed rates start at 4.99% for two years with a £900 fee. Our variable rates start at 4.50% with a £800 fee. Depending on how much you want to borrow and your circumstances, this may affect the rate available to you.”</u></p>	<p><u>No. The <i>firm</i> is comparing two products without recommending either, nor is the <i>firm</i> steering the customer to one over the other.</u></p>
<p>(6) <u>A lender with just one mortgage product advises a customer to take out that mortgage. The lender makes it clear that it does not give advice about products other than its own.</u></p>	<p><u>Yes. The lender may argue that this is not regulated advice because it is not recommending one product over another as it only has one product itself and does not give advice about the products of other lenders. However, in the <i>FCA</i>’s view this is still regulated advice. For advice to be regulated it must be advice on the merits of entering into a particular <i>regulated mortgage contract</i> (or varying one). It is possible to give advice about the merits of a product without comparing that product with another.</u></p>
<p><u>Note: Unless otherwise specified, the <i>firm</i> might be the lender or an advisory or intermediary <i>firm</i>.</u></p>	

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5.8 The regulated activities: advising on contracts of insurance

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- 5.8.4 G Advice about *contracts of insurance* will come within the *regulated activity* in article 53 of the *Regulated Activities Order* only if it relates to a particular *contract of insurance*. So, generic or general advice will not fall under article 53. In particular:

...

- (2) advice would not relate to a particular contract if it consists of a recommendation only that a *person* should take out insurance of a particular class without identifying any particular *insurance undertaking*, ~~or with ABC Insurers provided that the kind of insurance is not specified (either expressly or by implication): a recommendation only that a *person* should buy insurance from ABC Insurers could amount to advice if a specific insurance *policy* would be implied from the context;~~

...

- 5.8.5 G Typical recommendations and whether they will be regulated as advice on contracts of insurance under article 53 of the *Regulated Activities Order*. This table belongs to *PERG 5.8.4G*

Recommendation	Regulated under article 53 or not?
I recommend you take the ABC Insurers motor insurance <i>policy</i>	Yes. <u>This is even the case if ABC Insurers has many different motor insurance policies, as explained in PERG 4.6.6G. Although PERG 4.6.6G is about mortgages the same reason applies to insurance.</u>
...	
I recommend that you do not take out the ABC Insurers motor insurance <i>policy</i>	Yes. <u>See the entry in this table for the recommendation to take out the ABC Insurers motor insurance <i>policy</i>.</u>
...	
I recommend that you take out (or do not take out) insurance with ABC Insurers	Possibly (depending on whether or not the circumstances relating to the recommendation, including the range of possible products, is such that this amounts to an implied recommendation of a particular <i>policy</i>)
...	