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astl the association of short term lenders

Welcome to the May edition of the ASTL newsletter

The year is racing past and we do hope that you enjoy reading our updates and news items. There are a number of really important items in this month's edition. Please remember that this is your newsletter so please tell us what you want to see and submit items for inclusion. In this edition:

- The latest update on the current issue concerning undisclosed commissions, including our position at the ASTL and information on resources we are making available to our members.
- A snapshot of the latest lending data.
- A sneak peak of our new website and information on our plans to launch a consumer PR campaign.
- Contributions from Memery Crystal and a look at the recent Lending After Lockdown digital event.

With thanks to those members and associates who support us with all input into our Newsletter and trust that you will enjoy their contributions.

NEWS INSIDE

ASTL UPDATES

Undisclosed Commissions

Sarah Watley, a Partner at Moore Barlow, has informed us of a case with which her team were recently involved.

The Moore Barlow team obtained a judgement for a lender client in the Court of Appeal which has wide ranging implications for the lending industry.

The outcome of the case makes it clear that if a lender has paid a commission to a broker which has not been disclosed to the borrower, that lender is now more at risk of the entire loan being set aside. Where a loan is set aside this can mean that a lender will have to make a substantial payment to the borrower and in some cases they might also be required to pay damages. Moore Barlow says this also has implications for buying and selling other lenders' books.

More details about the case and its implications for the industry can be found in this article on the Moore Barlow website.

At the ASTL, we believe this to be a matter of the utmost importance and we are investigating the introduction of a standard minimum level of 'lender to consumer' fee disclosure for all of our members at the earliest stage in the process to ensure protection from retrospective claims in the future. We are also hoping to arrange a presentation by Sarah, followed by a Q&A, to support our members. Look out for communications on this as we are trying to get a date in the diary soon.

Lending Data

Our Q1 2021 lending data reveals that new bridging applications achieved £7.49bn, an increase of more than 25.5% on the same period in 2020.

The data shows that the value of new bridging applications in Q1 2021 was 12.0% higher than in Q4 2020 and 17.9% higher on the previous year in the 12-month period ending 31st March 2021, reflecting feedback from the market demonstrating increased demand from customers.

Completions in Q1 2021 fell by 1.9% on Q4 2020 but were up by 10.7% on the same period last year. In the 12 months up to 31st March 2021, completions were down by 24.1% on the previous year, reflecting the period of low activity during last year's lockdowns.

The value of bridging loan books dropped to £4.40bn at the end of Q1 2021, a slight decrease of 1.7% on the previous quarter and down by 3.5% on the same period last year.

There was positive news regarding defaults, with the value of loans in default showing a decrease of 4.5% compared to December 2020. The value of loans in default is now just 2.2% higher than March 2020.

These lending figures reflect the story we are hearing from the market, that everyone is busy with new business applications. In fact, the value of applications in the first quarter of 2021 was more than a quarter higher than the same period in 2021, which was mostly unaffected by the Covid pandemic.

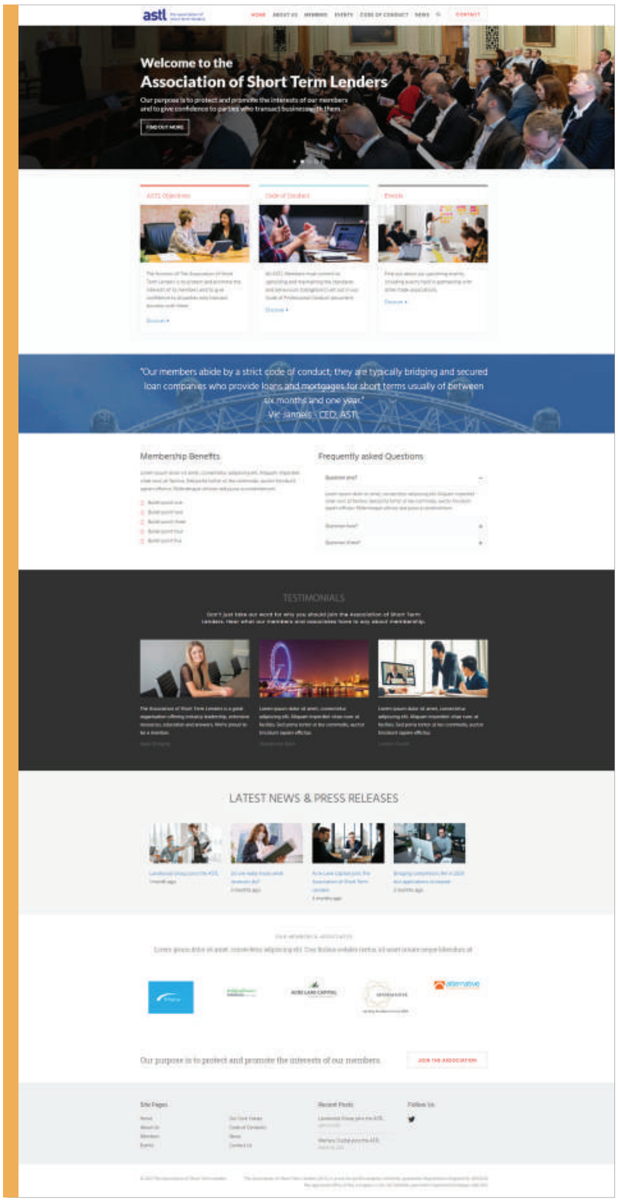
The value of completions remains relatively steady, which means we are seeing an increasing number of bridging loan applications that are not progressing through to completions. This is likely to be a combination of more rigorous underwriting by lenders, brokers hedging their bets by submitting multiple applications to multiple lenders and some cases where bridging is no longer required by the time of the completion date. We should keep a watchful eye on this trend as a decreasing conversion rate for loans benefits nobody in the process.

On a more positive note, the value of defaults decreased on last quarter and is only a little higher than it was at the start of the pandemic. This reflects the hard work of all of our members in working with their existing customers over the last year and, with positive signs for the economy ahead, we have reason to believe that this trend can continue.

Website & Consumer PR

We are currently in the process of redesigning the ASTL website, and updating the content, to launch a new website that better promotes the Association, our Members and Associate Members.

Here's a sneak preview of the design for the new homepage:



We hope to have the new site up and running soon and will keep you posted on the launch details.

Once we have delivered a better shop window for the ASTL and our members, we plan to launch an ongoing campaign of direct-to-consumer PR to help increase awareness and understanding of short-term lending and its many uses. We will take a research based approach to this activity, combining our own lending data with YouGov Omnibus Survey data that will help us to better understand people's understanding of the bridging market, their behaviours and their attitudes. We will keep you informed throughout the process.

HAVE YOUR SAY

The intersect between bridge finance arrangement and financial regulation

Daniel Tunkel, Partner, Head of Financial Regulation, Memery Crystal

This is actually a complex area, and this piece will address just the most obvious points. If you are in the business of using third party moneys to manufacture loans to borrowers, there is at least this much that you need to be aware of, but actually quite a bit more besides.

The starting point is obvious: this is all about lending, and lending is not regulated (ignoring regulated mortgages and consumer credit). And this observation is of course correct. So why the concern that regulation might be relevant after all?

There are, I believe, as many as 14 different activities regulated by the Financial Conduct Authority that could be relevant, but there are two that stand out from the crowd and any business in this market needs to be aware of these and know how to manage around them.

First, there is the establishment and operation of collective investment schemes. There is a complicated definition of "collective investment scheme" in s 235 Financial Services and Markets Act 2000, which I will not analyse here. It is attended by various exemptions found in an Order made under s 235(5). Arrangements where multiple persons pool money to lend to an individual will be a CIS. But where those same parties pool money to lend to a company, there is an exemption under the Order that works provided that the company issues these lenders with an instrument of some sort that formally acknowledges the debt. This is all simple to achieve in a structure where the funders lend to the bridge finance company and it then on-lends. But the documentation must be correct to support this.

The second bugbear is deposit-taking. In principle, borrowing money to on-lend is deposit-taking. In principle, borrowing money to on-lend is deposit-taking (which requires regulation as a bank). There is an exemption here as well, if the borrower issues an instrument that acknowledges the debt. In effect, that same acknowledgment serves to knock out two regulatory threats. It is somewhat more complicated than this, and there are other regulatory issues to consider.

Incidentally, these points largely affect the business model where the bridge finance company borrows to on-lend; for those who merely introduce deals between third party lenders and borrowers, there are other issues that also need to be considered. I hope to address these and other matters of legal interest in further pieces in the Newsletter on future occasions.

Lending After Lockdown

Earlier this month three Associate Members of the ASTL collaborated to deliver a free online event for lenders. The event was called Lending After Lockdown and it was hosted by Brightstone Law, Westcor International and CG&Co.

Over the course of 90 minutes delegates were presented with insights from the three different, but complementary, perspectives of a lawyer, an LPA receiver and a title insurer. Each spoke about changes they had seen in the market as a result of Covid and what steps they suggested lenders should take to engage in safe, profitable lending moving forward.

There was also a panel discussion in which delegates put their own qestions to the hosts, ranging across a wide selection of issues.

If you missed the event, the full play-back is available now at www.lendingafterlockdown.co.uk

UNTIL NEXT TIME

We hope you have enjoyed the latest edition of the ASTL newsletter. Remember, we value your feedback, so if you have any comments, or would like to register your interest to contribute in the future, please contact Alex Hammond (alex@alsocomms.com)