

Response to OFT supplementary consultation on continuous payment authority

Comments from Consumer Credit Counselling Service

Introduction

The Consumer Credit Counselling Service (CCCS) is the UK's leading debt charity and largest specialist provider of independent debt advice. We welcome this opportunity to respond to the OFT's supplementary consultation on the use of continuous payment authority as a means of recovering consumer credit debts.

CCCS is committed to improving the situation of financially distressed households. The advice and support we provide is always free, independent and impartial. We are the country's only major charitable provider of non-statutory debt management plans (DMPs) and currently manage the repayment of around £3.6 billion of unsecured debt.

CCCS aims to separate the "can't pays" from the "won't pays", and in doing so is reducing the costs to the credit industry in the UK.

In 2010, CCCS helped around 418,000 people with free advice and support services, including specialist insolvency support, welfare benefit checks, and DMPs. In the same year, the charity helped clients to repay £289 million to their lenders and the collectors who had bought their debt.

CCCS has additional capacity in its services and could help hundreds of thousands more people – the charity was able to rapidly step up its operation in response to the recession to meet a 35 percent increase in demand.

CCCS is funded on the basis of a unique set of relationships with all the major banks, credit cards companies and other lenders. Creditors agree to pay what's known as a "Fair Share Contribution" in recognition of the unique service CCCS provides to the financially vulnerable. Fair Share means the creditor rather than the debtor pays for debt advice, allowing CCCS to operate independently of taxpayer support.

The charity is very happy to share its experience and welcomes the opportunity to work with the Office of Fair Trading on these issues.

Questions

Q1 Are there any substantive aspects of the above paragraphs with which you disagree?

CCCS welcomed the OFT's revised guidance for debt collection agencies and all other businesses engaged in recovery of consumer credit debts, in particular for its clarity and scope. We support the OFT's attempts to update its guidance in view of new and emerging practices, including those of payday lenders.

We strongly support the OFT's intentions behind the proposed new examples in paragraph 3.9 (m) and (n) of the guidance. However, we are concerned that the existing wording does not correctly represent consumer rights under the Payments Services

Regulations (PSRs). We are particularly worried that the current wording will have given firms, including payday lenders, the wrong impression that consumers have “no automatic right to cancel” a continuous payment authority (CPA), when the FSA has clarified to ourselves and others that this is not the case.

Part 6 of the PSRs makes provision for the rights and obligations relating to the provision of payment services. The FSA confirmed to CCCS that under regulation 55 (1) the customer has an absolute right to withdraw consent from a payment transaction at any time, subject to regulation 67 (2) to (5) – which in the case of CPAs, allows the payer to withdraw consent at any time up to “the end of the business day preceding the day agreed for debiting [...] funds”.

So once a customer has told the payment service provider not to allow a payment to go through, it is unauthorised, and the bank or card issuer should not make any further payments. This is “irrespective of any underlying obligations between the payer and payee”¹ such as those that might have been agreed to as a result of confusing terms written into, for example, a contract for a payday loan.

Therefore, if the bank or card issuer makes a payment once the customer withdraws their consent, the bank is in breach of the PSRs and the customer is entitled to an immediate refund – including any interest and charges².

It is our understanding that the banks recognise this is the correct interpretation of the regulations and are working to update their systems so that they can stop future unauthorised payments.

However, for the reasons above, we believe that the OFT’s revised guidance needs to be rewritten to take proper account of the PSRs.

The amended guidance needs to ensure that firms are aware of their obligations vis-à-vis the consumer’s right to withdraw consent – and effectively ‘cancel’ – a continuous authority.

The guidance should further ensure that firms are required to set out in pre-agreement explanations the borrower’s right to cancel, in such a way that it is brought to the borrower’s attention; the guidance should also oblige firms to put in place a clear and transparent process that enables debtors to withdraw consent from a payment transaction, as per the PSRs.

Q2 Do you consider that there are any significant omissions?

See our response to Q1, above.

Q3 Do you have any other suggestions for improvement?

The evidence from our clients is that the main problems found in relation to CPAs in general concern the **lack of control** borrowers have in relation to them. Payday lenders are the source of a third of the serious complaints of people who come to us with unmanageable debt. The payday lending market has been the main source of problems on continuous authority, but we have also seen evidence of misuse by debt management companies.

¹ Payment Service Regulations 2009 Part 1 (2) (1)

² Regulation 61 Payment Service Regulations 2009

We are concerned that the ability to rely on CPAs to ensure repayment direct from the borrower's bank account may result in payday lenders not carrying out thorough credit and affordability checks.

In addition, a number of clients have reported instances where short-term lenders have ignored clear signs of financial difficulty and instead taken out – either in a single payment or through repeated exercise of a CPA – the full sum owed, without any regard to the priority bills the borrower needs to pay to secure their home or essential goods and services.

We have also seen cases where payday lenders have ignored CCCS proposals for a debtor to make repayments on a payday loan through a DMP – instead, lenders have taken the full amount outstanding, without express consent, forcing our clients into arrears on priority bills and debts. Such instances contravene several examples of unfair practices in the OFT's revised guidance.

In addition, we are happy to share the evidence we have of the following unfair practices:

- (a) payday lenders continuing to present a CPA once a consumer has been issued a default notice, demonstrating a lack of forbearance
- (b) payday lenders taking larger sums than specifically agreed, for instance, taking the whole amount outstanding instead of instalments, resulting in financial hardship
- (c) payday lenders taking smaller amounts than agreed, so that the outstanding debt becomes liable for interest and charges and begins to spiral
- (d) short-term lenders taking payment on different dates to those agreed
- (e) short-term lenders taking debit card details for a single payment but then using them to take further payments without permission
- (f) payday lenders using the card details (including those of a third party) obtained for a one-off repayment to subsequently clear the debts of the borrower in additional payments that have not been authorised
- (g) payment being taken on the basis of CPA on a cancelled card and debited on a new card linked to the same bank account
- (h) consumers writing to a payday lender cancelling the authority to take payment, but being (a) ignored by the lender, or (b) ignored by both the lender and the bank
- (i) payday loan agreements which include a clause stating that the lender will present for payment when the debtor is in default
- (j) payday loan clients providing card details over the telephone – where there is no paper trail – without authorising a CPA who subsequently find out that money has been taken from their account