

A New Approach to Financial Regulation: Consultation On Reforming the Consumer Credit Regime

Comments from Consumer Credit Counselling Service

Introduction

The Consumer Credit Counselling Service (CCCS) is the UK's largest dedicated provider of independent debt advice. We are already working with HM Treasury on other topics, notably the future funding and delivery of debt advice. We welcome the opportunity to comment on HM Treasury's consultation on reforming the consumer credit regime as part of the new approach to financial regulation.

Given the services CCCS provides, we are particularly interested in the roles, powers and governance of the Consumer Protection and Markets Authority (CPMA)¹, and how it will interact with the other new regulatory bodies. Many of those counselled by CCCS have been badly served by the financial services industry, in terms of the appropriateness of products they have been sold, their level of indebtedness, or the so called solutions they have been offered to mitigate or manage their debt problems. In recent years there have been various initiatives to educate consumers on financial matters. However, product complexity, innovation and ever developing sales techniques mean that consumers continue to need protection. Relying on their ability to make informed buying decisions is not enough.

The scale of consumer detriment and need for firm regulatory action was underlined by the OFT's recent findings of unacceptable failings in the fee-charging debt management industry, which has resulted in a significant number of firms surrendering or losing their licences.

As a result, we continue to believe that the CPMA must be a strong advocate for consumers. In the current climate, we fear there may be pressures to put prudential concerns ahead of consumer concerns. In order to give consumers the confidence that they will be treated fairly, we believe it essential that the CPMA is established as the equal of the PRA and not its junior partner. Our responses reflect our support for this vision for the CPMA.

In addition, CCCS will be directly affected by any decision to transfer responsibility for the regulation of consumer credit from the Office of Fair Trading (OFT) to the CPMA. CCCS counsels clients on how to manage their consumer credit commitments and holds its own consumer credit licence. It has participated in recent discussions and consultations relevant to the

¹ This has been renamed Financial Conduct Authority but we have retained the term used in the original consultation.

regulation of consumer credit. As a registered charity, CCCS has ongoing obligations to meet the high standards of management and financial stability set by the Charities Commission, but it is by no means certain that these would be sufficient to safeguard clients of free debt advice.

In addition we assume that one of the features of a FSMA based regime would be the requirement for managers and customer facing staff of commercial consumer credit firms to be individually approved by the CPMA. We believe that this is an issue which merits further consideration as mainstream regulation could prove burdensome for CCCS as well as others debt advice charities.

Above all, we think it vital that the CPMA is set up in anticipation of the future transfer of consumer credit responsibilities. The range and complexity of consumer issues, the fact that this is a rapidly changing market and the risk of significant consumer detriment, are probably greater in consumer credit than in any other area of retail financial services. The CPMA needs to be planned and established in anticipation of the responsibilities, challenges and opportunities that consumer credit regulation will bring. The planning should include work on the level of resources needed to regulate consumer credit effectively, and to ensure continuity of focus on specific industry and firm issues.

We believe the Treasury should establish the CPMA as a consumer credit regulator in shadow form from the outset. At the very least, the CPMA should, from its inception, track developments in consumer credit and start planning for the full operational transfer of consumer credit responsibilities from the OFT.

Otherwise, given the other changes taking place at the OFT, there is a serious risk that consumer credit regulation will be neglected during a period when (as the OFT's recent view of debt management firms underlines) urgent work is needed. The Treasury itself is jointly undertaking with BIS the review of consumer credit and insolvency, the result of which are likely to have considerable consequences for consumer credit regulation. Further, early engagement with consumer credit will help the CPMA to take forward more effectively related FSA work streams, not least the FSA's current work on responsible mortgage lending.

With the prospect that consumer credit will be transferred to the CPMA, we are therefore keen to emphasise these points, comment on those parts of the current consultation most relevant to the CPMA, and more generally to ensure that consumer concerns are properly accommodated in the new regulatory framework.

We have responded to those consultation questions of most relevance to our work and interests.

Consultation Questions

Q1. Do you agree with this assessment of the consumer credit market?

In general, we agree with this assessment of the consumer credit market.

We remain concerned, however about the lack of transparency and increasing opportunities for consumer detriment in the debt management market. For example, it is still unclear about how many debt management plans (DMPs) are operating at any one time or the breakage rates of Individual Voluntary Arrangements (IVAs).

Q2. Is this a fair assessment of the problems caused by the way in which consumer credit is currently regulated and issues that may arise as a result of the split in responsibility for consumer credit and other retail financial services?

We believe this is a fair assessment of the current problems.

Q3. The Government would welcome further evidence relating to the consumer credit regime, including in particular:

- **the types of risks faced by consumers in consumer credit markets;**
- **key provisions for consumer protection under the current regime and their effectiveness in securing appropriate outcomes for consumers; and**
- **the incidence of regulatory duplications or burdens on firms and/or inconsistent regulation of similar types of business.**

The risks faced by consumers in terms of mis-selling and over indebtedness have been well evidenced by various reports and regulatory enforcement actions. The response to these risks has been effective at times, and the regulatory changes now being considered will, we believe, further improve the ability to identify problems and protect consumers.

However, the majority of consumers approaching CCCS for debt advice are in that position because of a life event rather than because they were over indebted or sold an inappropriate product. For example job loss or reduced income accounted for 48.1 percent of our clients' debt problems last year. These changes are rarely foreseen or avoidable. The clients are invariably inexperienced in the debt management options open to them. The number of people experiencing such debt problems is rising, and we believe it will continue to rise as a direct consequence of rising unemployment, stagnating incomes at a time of rising costs and when interest rates rises increase the costs of mortgages (there is no doubt that historically low interest rates have been one of the cushions which have allowed many families to cope). At the same time the number of fee charging debt management companies is rising, with a poor record of compliance.

We believe that this combination of rising numbers of consumers with debt issues, along with a new sector of the financial services industry attempting to sell them solutions, is unparalleled and a significant risk.

Q4. Do you consider these objectives for reform of the consumer credit regime to be appropriate and attainable?

We believe that the objectives for reform are appropriate, particularly in aiming to respond to actual or potential gaps in consumer protection, and in strengthening overall protection of consumers. However, we believe that whether these objectives are attained depends upon whether CPMA is ready and able to carry out its functions without losing continuity and momentum.

It is currently Government policy to promote more intrusive regulation of financial services, including interventions in early stages of the lifecycles of products and services. We believe that these initiatives should be supported and urge their application to consumer credit regulation under the proposed new regime.

We would urge the Government to make sure that there are suitable sources of credit available for all consumers to prevent the less well-off being left with no option but to pay more for credit than better off consumers.

Q5. The government welcomes views on the impact a unified regulatory regime for retail financial services may have in terms of clarity, coherence and improved market oversight.

As we have already stated, we believe that the actual implementation will be key to success in these areas.

Q6. The government welcomes views on the role of institutions other than the OFT in the current consumer credit regime, and the benefit they may confer.

Trading standards services fulfil a very important role in taking action against illegal money lenders, and supplying local intelligence to the OFT with regard to consumer credit licensing actions. In our view it is vital that the CPMA regime allows TSS to be appointed to carry out such work. We are concerned that cuts in local government may have direct impact on the resources available to trading standards and urge that this should be carefully monitored and appropriate action taken.

Q7. The government welcomes views on factors the government or the CPMA may wish to consider in the event of a transfer of consumer credit regulation relating to how the overall level of consumer protection might best be retained or enhanced.

The current regimes have important differences in terms not only of how they are enforced and the sanctions available, but also the forums in which

consumers can take action. FOS is an important free to access service for consumers to obtain redress. However, there are situations where a consumer has to use or defend court actions, for example in property repossession cases. Even if current CCA rules are transposed into a CPMA rule book, it is vital that these rules are binding on a court.

We support option 1 of the government's proposals, but strongly urge the retention of the individual legal rights conferred by CCA which have no parallel in the current FSMA regime. At the very least those rights should not be repealed unless equivalent protections are given under the future arrangements

Q8. The government would welcome further evidence relating to:

- **the use of consumer credit by small and medium sized enterprises (SMEs);**
- **whether the protections currently afforded by the CCA are appropriate and cover the right groups of businesses; and**
- **the cost and benefits of considering extending FSMA-style conduct of business rules to wider groups of SMEs.**

No comment

Q9. The government welcomes views on how consumer credit firms and consumers may be affected by the increased flexibility that could be provided by a rules-based regime.

We welcome the increased flexibility that a rules-based regime would offer for consumers' protection.

Q10. The government welcomes views on the impact a FSMA-style supervisory approach may have in terms of ensuring effective and appropriate consumer protection.

We would welcome the more robust authorisation and supervisory approach under a FSMA/FSA style regime. However, we strongly urge the retention of the individual rights conferred by the CCA.

Q11. The government welcomes views on the synergies afforded by the current regime in tackling problems associated with the sale of goods and services on credit, and how these might best be retained in the design of a new regime.

We certainly support the retention of the added protections afforded to consumers purchasing goods and services using credit cards under section 75 of the Consumer Credit Act. If, as is proposed, the OFT is merged with the Competition Commission, we believe it is important for its responsibilities for breaches in general consumer protection should reside with CPMA.

Q12. Do you agree that transferring consumer credit regulation to a FSMA-style regime to sit alongside other retail financial services

regulation under the CPMA would support the government's objectives (as outlined in paragraph 1.18 of chapter one)?

Yes, provided as stated above that the individual legal rights conferred by CCA are retained by the new regime.

Q13. Are there other advantages or disadvantages that you consider could result from transferring consumer credit regulation to sit alongside that of other retail financial services?

No comments.

Q. 14 Are there specific issues that you believe the government should consider in assessing the merits of option one? How could these be addressed in the design of a new regime as proposed in option one?

No comments.

Q15. If you do not agree with the government's preferred option one, do you views on the factors set out in paragraph 2.4 that the government should consider in determining the most appropriate regulatory authority for the CCA regime under option two?

No comments.

Q16. The government welcomes views on the suitability of the provisions of a FSMA-style regime, such as those referred to in paragraph 3.6, to different categories of consumer credit business.

The FSMA-regime requires approval of individuals working in authorised firms such as senior management as well as all customer facing roles, meaning that individuals could be fined, suspended or banned. These individual approval requirements have significant implications for debt advice charities such as CCCS and CAB.

Q17. Do you agree that statutory processes relating to the CPMA rule-making, a risk-based approach to regulation and differentiated fee-raising arrangements could provide useful mechanisms in ensuring that a proportionate approach is taken to consumer credit under a FSMA-style regime?

No comments.

Q18. The government welcomes views on key factors that would need to be assessed in considering fee arrangements for consumer credit firms.

We agree with the statements regarding how regulatory risks and related costs can vary between sectors and firms. We think this is particularly important in the debt advice sector. Recent licensing activity by the OFT would suggest that this is a higher risk area of activity. However, within this

sector there are a number of charities (including CCCS) that provide valuable, free, debt counselling advice to consumers. Their activities have not been subject to consumer and regulator concerns, and therefore should not bear higher levels of regulatory scrutiny and cost. It is also worth noting that charities are already subject to financial supervision by the Charities Commission.

Q19. The government welcomes:

- **evidence related to the current appointed representatives regime;**
- **views on how an appointed representatives model might be applied to different categories of consumer credit activities, including how current business models and networks might lend themselves to such an approach; and**
- **evidence relating to the implications an appointed representatives regime might have for firms and consumers.**

No comments.

Q20. The government welcomes:

- **evidence relating to experiences of the current group licensing regime; and**
- **views on how the professional bodies regime might be adapted for different categories of consumer credit activities.**

We would welcome the greater scrutiny and intensive regulation under the new regime but are concerned by its possible unintended consequences for Citizens Advice and CCCS. It is our view, supported by some analysis, that long term detriment applies in the commercial sector and therefore it is here that a proportionate regulatory regime should address the risk to consumers. Therefore the full weight of the regime should be focussed on the commercial sector.

Q21. The government welcomes views on the extent to which self-regulatory codes might continue to deal with aspects of lending to consumers and small and medium enterprises (SMEs).

No comments.

Q.22 Do you consider that there would be a case for deregulation of certain categories of consumer credit activity in the event of a transfer? Please explain why.

Not in the case of commercial credit and debt management firms. Commercial providers have a track record of innovating to avoid regulation. Therefore it is important that a strong and robust CPMA is able to apply the full force of regulation consistently across the entire commercial sector.

As section 3.4.2 implies there is a distinction between the free sector and the commercial credit and advice sector. Bringing the full weight of FSMA down on the free to client advice sector would have unintended consequences on the sector and the people it serves. We suggest that consideration should be given to the Charities Commission to provide appropriate safeguards. Alternatively there is merit in allowing group licenses for debt advice providers.

Q23. Are there other ways in which the design of a new consumer credit regime based on a FSMA-style framework might ensure a proportionate and effective approach?

No comments

Q24. The government welcomes views on how the treatment of agreements already in existence could be approached.

No comments

Q25. The government welcomes views on:

- **how existing licensees could be dealt with; and**
- **factors that should be considered in determining whether a modified approach could be adopted for particular categories of licensed firms.**

We believe that it is important to consider the impact on consumers if CPMA is minded not to continue a licensee's ability to trade. The firm/licensee must continue to comply with the new regulatory regime in terms of collections and run-off of any existing debts, in order to protect its customers.

Where CPMA has evidence that specific sectors of the lending industry may not be minded to continue trading (or CPMA itself is reticent to license these sectors) careful consideration will need to be given to consumers who may have traditionally relied on these sectors for credit, or who will become reliant on alternative lenders (licensed or otherwise) with similar unintended consequences.

Q26. The government welcomes views on key factors that would need to be considered in transitioning from the current to a new fee structure.

No comments

Q27. Are there other factors the government should take account of in considering transitional arrangements?

No comments

Q28. The government would welcome evidence on the experiences of firms, consumers and their representatives in relation to similar

previous transitions, for example the extension of FSA jurisdiction to new markets since 2000.

No comments