

Consultation Response



Power to suspend consumer credit licences - Draft OFT guidance for licence holders

Comments from StepChange Debt Charity

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Introduction

StepChange Debt Charity is the new name for the Consumer Credit Counselling Service (CCCS). StepChange is a leading provider of independent debt advice and the country's only major charitable provider of free-to-client debt management plans (DMPs).

In 2011, we helped around 370,000 people with 1.25 million problem debts. Our advisers often see cases involving serious consumer detriment that we are happy to share with the OFT's enforcement team.

The advice and support we provide is always free, independent and impartial. In 2011, the charity helped clients to repay a total of £312 million. We currently manage over £3.7 billion worth of unsecured problem debt.

StepChange Debt Charity delivers help to many people who suffer detriment because of unfair business practices. We therefore welcome the OFT's new interim power to suspend a consumer credit licence with immediate effect. We believe the new power is the minimum protection necessary to stop rogue traders from exploiting weaknesses in the existing appeals process. It will help prevent a regulatory vacuum from opening up in the period before consumer credit regulation is transferred to the FCA.

This response sets out our comments on the contents of the OFT's draft guidance document on how it will use this new power, and on how the guidance itself is presented.

Q1 Do you have any comments about the structure and format of the guidance document?

StepChange welcomes the guidance document. We believe it is important that the OFT is able to make use of this new power in order to protect consumers

Q2 Is the guidance clear on the circumstances in which the power to suspend may be employed?

Yes, for the most part. The over-riding consideration at stake in the test for suspension – that there is an “urgent necessity” to protect consumers from “imminent risk” – is well defined (3.3, 3.8). In particular, it is clear that “necessity” relates to the potential for harm, “urgent” means the risk is serious *and* either current or foreseeable – and “protection” cannot be achieved by any other regulatory action.

However, we have two concerns:

Firstly, in the paragraph of the guidance that discusses the other enforcement tools at the OFT's disposal (3.8, page 9), footnote two says:

“The OFT's enforcement powers and principles are explained further in Chapter [5] of this guidance document”.

However, this does not seem to be the case. Therefore, we believe footnote two should be amended so that it at least refers to OFT1221, the OFT's "Statement of consumer protection enforcement principles".

Second, paragraph 3.8 of the guidance (page 8) suggests "anecdotal evidence" would be unlikely to result in suspension action. We do not believe this is helpful as there is no detail about what "anecdotal" evidence means. Moreover, we are concerned that this section of the guidance could be misconstrued so that a firm could argue that qualitative evidence about consumer problems is just "anecdotal" – which surely is not what the OFT intends.

In the case of some firms, StepChange Debt Charity has documented numerous serious cases of consumer detriment. It is important that when there is evidence from a number of sources and/or a significant weight of evidence, these cases are counted towards the case for suspension action.

Q3 Are there any substantive aspects with which you disagree?

We believe suspension with immediate effect should be the default presumption if the conditions for suspension action are met. It seems inconsistent to allow a firm to continue with unfair practices that may cause consumers significant harm while it is making representations. This is what the legislation is designed to prevent.

Furthermore we would point out that the threshold for suspension is "urgent necessity to prevent consumer harm" with no suggestion that the definition of harm should be unduly restricted to cases where consumers may experience violence (4.11). Consumers can experience significant harm that needs urgent action in other ways.

Q4 Are the case studies and the rationale for the decisions clear?

StepChange Debt Charity believes that the case studies are both helpful and clear. In particular, we welcome Example 3 where a pattern of consumer complaints following undertakings by the licensee has led the OFT to suspend the firm's licence. In Example 1, the decision to suspend comes after a pattern of complaints has been established, which is again welcome. However, we strongly believe this example needs to avoid giving the impression that a licensee whose business practices are causing serious ongoing harm could escape suspension for ten months, especially in view of the Government's suggestion (in its impact assessment) that the interim power will only last for a maximum of 13 months. As such, the example needs to be amended – we would expect the OFT to take much swifter action to establish whether the suspension test is met in this case.

In addition, we believe the rationale for the decision in Example 4 is incomplete. In this example, the OFT has established that the licensee failed to declare all previous (serious) convictions, leading it to MTR the firm. However, the example goes on to say "there has been no evidence of ongoing consumer harm" since the licensee's most recent (declared) conviction. We believe the OFT should make clear that in such circumstances, **it would quickly seek to establish whether there was in fact evidence of consumer harm** that would warrant suspension of the firm's licence.

Q5 Do you consider that there are any significant omissions particularly in respect of the circumstances in which you would expect to see OFT suspend with immediate effect?

We believe that immediate suspension should apply to a broader set of cases. It should not only apply to harm deemed “particularly grave” (4.11) – i.e. where the consumer is at risk of violence – but instead encompass a broader understanding of how consumers can be seriously mis-harmed.

In addition, we believe the guidance could have more impact if some of the case studies highlighted bad practices thought to be more widespread in consumer credit markets. For instance, this could include a lender whose business model appears to be dependent on unfair collections practices, such as continuous payment authority misuse.

Q6 Is the decision-making model clear?

The introduction of the new power means firms will no longer be able to continue to operate pending the outcome of all appeals. We believe it is important to clarify this point in the paragraph on “Appeals of suspension decisions” (4.17) which talks about the right of appeal to the First Tier Tribunal.

We suggest an amendment to 4.17 to reiterate the point made earlier at 2.6, namely that:

“The licensee has the right to appeal a suspension decision to the First Tier Tribunal, however, this will not *prevent* the decision to suspend from *coming into effect* as specified in the suspension notice.”

Q7 Do you have any concerns about the process for decision-making, including representations?

We broadly welcome the role of a separate adjudicator where the suspension action is being considered wholly independently of other enforcement action – perhaps because the enforcement case has not progressed to an appropriate stage.

However, where the decision to suspend is an outcome of an enforcement case (MTR/DTR), it would appear logical for the OFT adjudicator to consider suspension action at the same time. There are likely to be cases where the evidence supporting the MTR decision also suggests that the business model or business practices of the firm are likely to continue to cause consumer harm. In which case, we believe that the decision to suspend should flow from the MTR/DTR decision. As such it is not clear why an additional decision-making process would be necessary.

We presume that where a firm appeals against a decision to suspend, the suspension will take effect pending that appeal. We welcome 4.10 that makes it clear that licence holders will not have an opportunity to delay a suspension decision prior to it being taken. This will help ensure consumers are protected as quickly as possible where there is an imminent risk of harm.

Q8 Is the guidance clear on representations and appeals mechanisms?

We believe that the guidance is clear.

Q9 What is your opinion on the time it will take for decisions to be made once representations have been made?

Subject to the points set out above, a maximum of one month for decisions to be made **once the suspension notice has been issued** is acceptable where the licence has been immediately suspended. This process should be much quicker if suspension is to take effect at a future date, as any delay increases the risk of further harm occurring.

Q10 An alternative to issuing a detailed record of the adjudicator's reconsideration of the decision within two weeks of representations, is the option of a short (skeleton) record provided in a quicker timeline. What would be your thoughts/preferences on this as an option?

StepChange Debt Charity would prefer to see the whole process speeded up if this is possible. As such, we would support the option of a short (skeleton) record provided in a quicker timeline.

Q11 Are there any substantive aspects with which you disagree?

Please see our answers to Q5 and Q7 above.

Q12 Do you consider that there are any significant omissions?

We believe the OFT should be clear that when a firm's licence is suspended, this will be publicised. This will ensure that consumers and advice agencies are informed about the suspension as quickly as possible.