

HM Treasury A new approach to financial regulation

Comments from the Consumer Credit Counselling Service

Introduction

The Consumer Credit Counselling Service (CCCS) is the UK's largest dedicated provider of independent debt advice, and a provider of generic financial 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 a 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), and how it will interact with the other new regulatory bodies.

Our starting point is that the CPMA must be a strong advocate for consumers. Many of those counselled by CCCS have been badly served by the financial services industry. In the current climate, we fear there may be pressures to put prudential concerns ahead of consumer concerns. We therefore greatly welcome the statement that the CPMA will be "a strong consumer champion in pursuit of a single objective".¹ 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.

Specifically, 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.² 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 regulation of consumer credit.

The consultation paper states that Government intends to consult on the merits of a transfer of responsibility for consumer credit from the OFT to the

¹ Paragraph 4.3.

² Paragraphs 4.53 – 4.56.

new CPMA. CCCS believes the case for a transfer is strong³, and looks forward to participating in that consultation. However, the outcome of the current consultation will shape the CPMA ahead of any transfer of consumer credit responsibilities.

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, and the risk of significant consumer detriment, are probably greater in consumer credit than in any other area of retail financial services.⁴ The CPMA needs to be planned and established in anticipation of the responsibilities, challenges and opportunities that consumer credit regulation will bring. The planning needs to include work on the level of resources needed to regulate consumer credit effectively.

The responsibilities and challenges of consumer credit regulation are evident from data quoted in the consultation document, with the OFT regulating 99,000 firms compared with 29,000 at the FSA (16,000 jointly regulated).⁵ Further, there are considerable problems with the consumer credit licensing regime, which, on the assumption it gains responsibility for consumer credit, we hope the CPMA will take early action to address. The scale of consumer detriment and need for firm regulatory action was underlined recently by the OFT's announcement that 129 debt management firms face losing their consumer credit licences unless immediate action is taken to comply with its Debt Management Guidance.⁶

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 recently announced review of consumer credit and insolvency, the result of which are likely to have considerable consequences for consumer credit regulation.⁷ 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.

³ It is noteworthy that the powers of the new US Consumer Financial Protection Bureau (CFPB) include the consolidation of responsibility within the Bureau for consumer protection in respect of all financial services, including both mortgage and consumer credit lending.

⁴ The challenges in consumer credit have been evident, for example, in the FSA's own extensive work to improve the sale of payment protection insurance allied to consumer loans

⁵ Paragraph 4.54.

⁶ <http://www.of.gov.uk/news-and-updates/press/2010/101-10>

⁷ <http://www.bis.gov.uk/consumer-credit>

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

The Bank of England and Financial Policy Committee (FPC)

1 Should the FPC have a single, clear, unconstrained objective relating to financial stability and its macro-prudential role, or should its objective be supplemented with secondary factors?

2 If you support the idea of secondary factors, what types of factors should be applied to the FPC?

3 How should these factors be formulated in legislation – for example, as a list of ‘have regards’ as is currently the case in the Financial Services and Markets Act 2000 (FSMA), or as a set of secondary statutory objectives which the FPC must balance?

We believe the FPC should have regard to the interests of consumers in its decision-making. Paragraph 2.26 states that decisions taken by the FPC, in particular, could have far-reaching consequences for the financial sector and the economy more widely. They may also have far-reaching consequences for consumers of financial services. It will therefore be important for the FPC to take the impact on consumers into consideration when pursuing its primary objective.

As part of the FPC’s transparency and accountability mechanisms, the consultation proposes a six-monthly Financial Stability Report.⁸ This could include an assessment of the impact of important FPC decisions during the period on consumers.

Prudential regulation authority (PRA)

4 The Government welcomes respondents’ views on:

- Whether the PRA should have regard to the primary objectives of the CPMA and FPC;

- Whether some or all of the principles for good regulation currently set out in section 2 of FSMA, particularly those relating to good regulatory practice, should be retained for the PRA;

⁸ Paragraph 2.53

- **Whether, specifically, the requirement to have regard to potential adverse impacts on innovation or the competitiveness of the UK financial services sector of regulatory action should be retained; and**
- **Whether there are any additional broader public interest considerations to which the PRA should have regard.**

We believe the PRA should have regard to the primary objectives of the CPMA. Indeed, it is difficult to envisage an effective working relationship between the PRA and CPMA if it does not have regard to the CPMA's primary objectives.

This relationship is particularly important in the current environment, where prudential reforms require banks to strengthen their capital ratios. There is potentially a tension between the prudential desire to see banks rebuild their profitability and the impact on consumers of the price and margin increases required to deliver this. For example, focusing on consumer loans, we have already seen a noticeable widening of interest margins since the financial crisis. Further, a minority of lenders continue to levy interest and charges on loans in arrears, even when CCCS has put in place sustainable arrangements for debt repayment.

The PRA needs to have regard to the impact on consumers of pricing and other relevant changes that banks may seek to introduce on supposedly prudential grounds.

5 Is the model proposed in paragraph 3.16 – with each authority responsible for all decisions within their remit subject to financial stability considerations – appropriate, or would an integrated model (for example, giving one authority responsibility for authorisation and removal of permissions) be preferable?

Our preference is for the model proposed in paragraph 3.16. The risk of giving one authority responsibility for authorisation and removal of permissions is that (assuming the PRA were given responsibility) consumer concerns take second place to prudential concerns.

6 Is the approach outlined in paragraph 3.17 to 3.23 for transfer of regulatory functions and rule making sufficient to enable the PRA to take a more risk-based, judgement-focussed approach to supervision?

7 Are safeguards on the PRA's rule-making function required?

8 If safeguards are required, how should the current FSMA safeguards be streamlined?

Consumer concerns may be relevant to some the key functions of the PRA listed in Paragraph 3.20, for example the approval of individuals to perform certain controlled functions within financial firms. There need to be

mechanisms in place (as per Box 3.B and Paragraph 3.26) to ensure consumer interests are sufficiently protected and taken into account in the PRA's exercise of its key functions.

We believe the rule-making function should continue to be subject to statutory processes, with wider public consultation.

9 The Government welcomes views on the measures proposed in paragraphs 3.28 to 3.41, which are designed to ensure that the operation of the PRA is transparent, operationally independent and accountable.

We believe the PRA should be as outward-facing as possible, with the accountability mechanisms set out in paragraph 4.36 applied.

While we welcome the fact that the PRA board will have a majority of non-executive members, we would like to see these positions filled through a process of open competition rather than Treasury appointments. We also recommend that non-executive members from a consumer background / with consumer experience are represented on the PRA board.

Consumer protection and markets authority (CPMA)

10 The Government welcomes respondents' views on:

- Whether the CPMA should have regard to the stability of firms and the financial system as a whole, by reference to the primary objectives of the PRA and FPC;

- Whether some or all of the principles for good regulation currently set out in section 2 of FSMA should be retained for the CPMA, and if so, which;

- Whether, specifically, the requirement to have regard to potential adverse impacts on innovation or the competitiveness of the UK financial services sector of regulatory action should be retained; and

- Whether there are any additional broader public interest considerations to which the CPMA should have regard.

The separation of prudential and consumer regulation does not, of itself, eliminate potential tensions between “the need to focus on the prudential health of regulated firms” and “the need to devote sufficient attention to the conduct of firms in retail markets”.⁹ Much depends on the relationship between the prudential and consumer regulator. If this is not balanced, ordinary consumers of retail products may continue to lack the degree of regulatory focus or protection they expect or require.¹⁰

⁹ Paragraph 4.1.

¹⁰ Paragraph 4.2.

It is noteworthy that in the United States the President himself, at the Signing of the Dodd-Frank Wall Street Reform and Consumer Protection Act that creates the Consumer Financial Protection Bureau (CFPB) commented that the new US consumer watchdog will have just one job: “looking out for people — not big banks, not lenders, not investment houses — looking out for people as they interact with the financial system.”¹¹

While, within the proposed UK framework, the CPMA should have regard to the stability of firms and the financial system as a whole, it must also be vigilant against firms justifying anti-consumer pricing and charging practices on prudential grounds (see above). The CPMA and PRA must have mutual regard for each other’s objectives, with consumer protection not subordinated to prudential concerns.

11 Are the accountability mechanisms proposed for the CPMA appropriate and sufficient for its role as an independent conduct regulator?

12 The Government welcomes views on the role and membership of the three proposed statutory panels for the CPMA.

As with the PRA, we believe the CPMA should be as outward-facing as possible. This will be essential for its credibility as a consumer champion.

As with the PRA, while we welcome the fact that the CPMA board will have a majority of non-executive members, we would like to see these positions filled through a process of open competition rather than simply Treasury/BIS appointments. As with the FSA, it is essential that people with a background in consumer advocacy are represented on the CPMA board.

We support the suggestion that the Consumer Financial Education Body (CFEB) CEO sits on the CPMA board.¹² We also note the recent introduction of a requirement on the FSA to have regard to the information provided by CFEB in pursuit of its consumer protection objective.¹³ We believe this requirement should be retained for the CPMA, with CFEB encouraged to raise with the CPMA concerns and instances of consumer detriment it identifies in its work.

As regards the proposed statutory panels, our main interest is clearly in the Consumer Panel. We are pleased that this is to be retained. We believe members of the Panel should continue to be recruited through a process of open competition. We also believe it important that the Panel is adequately resourced, and mechanisms in place to ensure its research, findings and advice are given due consideration by the CPMA board and senior executive. Further, the focus and composition of the Panel will need re-assessment if

¹¹ <http://www.whitehouse.gov/the-press-office/remarks-president-signing-dodd-frank-wall-street-reform-and-consumer-protection-act>

¹² As suggested in paragraph 4.49.

¹³ <http://www.fsa.gov.uk/pages/Library/Communication/PR/2010/155.shtml>

and when consumer credit responsibilities are transferred from the OFT to the CPMA.

13 The Government welcomes views on the proposed funding arrangements, in particular, the proposal that the CPMA will be the fee- and levy-collecting body for all regulatory authorities and associated bodies.

If the CPMA becomes the fee- and levy-collecting body, it will be important to ensure that this does not compromise the independence of the other regulatory authorities and associated bodies.

14 The Government welcomes views on the proposed alternative options for operating models for the FSCS.

No specific comment.

Markets and infrastructure

This section of the paper is not sufficiently relevant to our work and areas of interest for CCCS to comment.

Crisis management

This section of the paper is not sufficiently relevant to our work and areas of interest for CCCS to comment.

Consumer Credit Counselling Service
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