BEIS CONSULTATION ON REFORMING COMPETITION AND CONSUMER

RESPONSE FROM THE FINANCE & LEASING ASSOCIATION

Introduction

The Finance & Leasing Association (FLA) is the leading trade association for the UK consumer credit, motor finance and asset finance sectors. FLA member companies include banks, the finance subsidiaries of major manufacturers and independent finance firms. They offer credit services to customers from all social groups, via motor finance, credit and store cards, personal loans, point of sale finance, and a number of other consumer credit products, as well as a wide range of leasing and hire purchase services to businesses of all sizes.

In 2020, FLA members provided £113 billion of new finance to UK businesses and households, £39 billion of which helped consumers and businesses buy new and used cars, including over 93% of private new car registrations. £86 billion was in the form of consumer credit, accounting for over a third of all new consumer credit written in the UK. £27 billion of finance was provided to businesses and the public sector to support investment in new equipment, representing over a third of UK investment in machinery, equipment and purchased software in the UK last year.

We welcome the opportunity to comment on this Government consultation on reforming competition and consumer policy. Our response below is specific to some of the questions raised in the consultation.

Response

Competition questions 1-29

All of the FLA's motor and consumer finance members, along with many asset finance providers, are regulated by the FCA. Given the FCA is a competition regulator and holds its own competition powers we hold no strong views around the proposals set out in relation to the reform of competition policy. As a trade body, the FLA itself takes competition law very seriously in all of its activities as do our members. We broadly agree with Government's plans to implement stronger and faster enforcement against illegal anticompetitive conduct. Effective competition is extremely important in ensuring value for consumers and businesses, as well as providing choice, innovation and a framework to foster economic growth.

Q48. Are there examples of existing consumer law which could be simplified or where we could give greater clarity, reducing uncertainty (and cost of legal advice) for businesses/consumers?

Q49. Are there perverse incentives or unintended consequences from our existing consumer law?

Q50. Are there any redundant or unnecessarily burdensome requirements to provide information or other reporting requirements, which burden businesses disproportionately compared to the benefits they bring to consumers?

The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (the CCRs) set out various consumer rights, including in relation to cancellation of distance and off-premises contracts. The 2013 Regulations exclude from their ambit contracts for services of banking, credit, insurance, personal pension, investment or payment nature (Regulation 6(1)(b)). However, regulated consumer hire agreements are caught by the CCRs, and regulated credit agreements financing online purchases are 'ancillary contracts' under Regulation 38(3) and 38(4). An increasing number of consumer purchase contracts, governed by the CCRs are made in conjunction with/at the same time as regulated credit agreements.

- **Reforms are necessary to make it simpler for consumers to understand their rights, and businesses to understand requirements, relating to the distance sales of vehicles subject to credit or hire agreements** - an increasing number of vehicles are financed or leased using remote/online sales channels in the UK. The pandemic has led to a greater propensity for consumers to complete partially or fully online car buying/leasing journeys. Where vehicles are sold or leased at a distance, different law and regulations come into effect that govern the sale of credit and hire at a distance. These work differently to the sale of the vehicle itself. Where a vehicle is leased, the consumer will sign a single regulated hire agreement governed by the CCRs. Where a vehicle is purchased on credit, the consumer will sign two contracts, a contract to purchase the vehicle, governed by the CCRs, and a second regulated consumer credit agreement. The statutes or regulations which determine the consumer's rights, including in relation to cancellation/withdrawal, under consumer credit or hire products made at a distance are:
    - Financial Services (Distance Marketing) Regulations 2004
    - Consumer Credit Act 1974 (with information requirements being set out in the Consumer Credit (Disclosure of Information) Regulations 2010 and the Consumer Credit (Agreements) Regulations 1983 and 2010
    - The FCA's Consumer Credit sourcebook (CONC 11)

  The legal framework for credit or lease agreements entered into at a distance creates real complexity, uncertainty and risks for lenders, dealers and brokers and more importantly makes it difficult for consumers to understand their rights in such a scenario, even where clear information is provided. The CCRs separately implement requirements for distance sales of most goods and

services, including the cash purchase of motor vehicles and its requirements are not always aligned to the above statutes.

- The rights available to consumers for the sale of the vehicle (sale of goods agreement) differ from the rights and requirements relating to the sale of finance or leasing products (credit or hire agreements). **We recommend Government consider this area of law and how it can be simplified, particularly since the costs of financing, running and maintaining vehicles, on average, makes up the second highest category of household expenditure after rent or mortgage payments[1]. We would be keen to discuss these issues with BEIS and HMT officials, to outline the risks in more detail and how these may be mitigated through legal reform.**

- We would also highlight concerns in the consumer lending industry prompted by increasing consumer demand for point of sale credit. In particular we would draw attention to a perverse scenario which can arise where a fixed sum credit agreement finances a purchase and the purchase contract is cancelled by the consumer under the CCRs: A consumer can email a trader saying he/she is going to cancel a purchase contract, the loan financing the purchase contract is automatically terminated, the lender refunds the consumer any payments already made and does not require any further payments, and then the consumer never returns the goods to the trader (which therefore never has any liability to refund), thereby effectively giving the consumer a windfall/goods free of charge.

- Regulation 32 states that a consumer can cancel their contract by giving the relevant trader a 'clear statement setting out the decision to cancel the contract' or by use of the model cancellation form set out in Schedule 3 to the CCRs. This results in the immediate termination of the loan contract under Regulation 38. However, while Regulation 34 CCRs gives the trader 14 days to reimburse the customer starting on the day after the trader receives the goods back (or, if earlier, on the day on which the consumer supplies evidence of having sent the good back), the lender does not have an equivalent timeframe to apply refunds and terminate. The lender must refund the customer any payments already made immediately and the customer has no liability to pay any further repayments. Point of sale lenders are usually reliant either on the trader notifying them of the cancellation (per Regulation 38(2), which traders will often do only when they receive the returned goods) or on the customer getting in touch. In both cases, the lender will not be able to verify that cancellation of the purchase contract has occurred or when it occurred.

- We would urge BEIS to review the provisions in the CCRs dealing with refunds and ancillary contracts to ensure they are future-proofed against the increasing prevalence of credit finance being integrated into digital commerce.

[1] According to data on household expenditure provided by the Office of National Statistics

- It should be noted in this context that **the Consumer Credit Act 1974 (CCA) is in urgent need of reform** – although we are in dialogue with HM Treasury and the FCA regarding reform of the CCA we would like to take the opportunity within this response to stress the importance of Government prioritising, over this term of parliament, work to modernise the Act so it is fit for the current and future marketplace. The CCA is the single most important piece of legislation governing the sale of consumer finance. From a motor finance perspective, provisions within the CCA present barriers and risks to lenders in financing electric vehicles which jeopardise the Government's net zero objectives, (particularly given that over 93% of new car registrations are sold on finance). More broadly the CCA contains inconsistent, varying rights for consumers, lenders and lessors; its provisions are not aligned to other areas of consumer law (as demonstrated above); and it sets out prescriptive and sometimes unhelpful requirements on the information provided to consumers which are not in their best interests and can be improved and simplified. We urge Government to consider the FCA's retained provisions of the Consumer Credit Act and begin the legislative reform process in consultation with industry and other stakeholders. It is worth noting that the European Commission has already issued proposed changes to the Consumer Credit Directive to modernise the regulations applicable to EU member states.

Q66. How can regulators and government balance the need to ensure timely redress for the consumer whilst allowing businesses the time to investigate complex complaints?

Q67. What changes could be made to the role of the 'Competent Authority' to improve overall ADR standards and provide sufficient oversight of ADR bodies?

Q68. What further changes could government make to the ADR Regulations to raise consumer and business confidence in ADR providers?

Q69. Do you agree that government should make business participation in ADR mandatory in the motor vehicles and home improvements sectors? If so, is the default position of requiring businesses to use ADR on a 'per case' basis rather than pay an ADR provider on a subscription basis the best way to manage the cost on business?

Q70. How would a 'nominal fee' to access ADR and a lower limit on the value of claims in these sectors affect consumer take-up of ADR and trader attitudes to the mandatory requirement?

- **We strongly support the introduction of mandatory ADR in the motor vehicles sector** – covering the sale of all vehicles, ancillary products and repair/maintenance services. We agree that due to the relatively high cost of vehicles compared to other goods and services that membership of an ADR scheme should be mandatory for dealerships and garages as it is for FCA authorised finance companies - whose customers have the right to escalate complaints to the Financial Ombudsman Service (FOS). Motor finance providers hold significant responsibilities for complaints relating to the quality of

vehicles. Many motor finance agreements require lenders to hold joint and several liability under section 75 of the CCA for the underlying vehicles they finance. Equally motor finance providers are subject to satisfactory quality dispute (SQD) complaints relating to the vehicles they finance under the Consumer Rights Act 2015.

- **The Motor Ombudsman (TMO) is the appropriate ADR provider to judge satisfactory quality dispute (SQD) complaints relating to vehicles** - We take the view that where there are SQD issues with the vehicle consumers should be able to complain to an ADR body that has the necessary expertise in responding to these complaints. Since these complaints are often directed towards lenders for financed vehicles under the current regulatory regime, if customers are not satisfied with the outcome provided by the lender they are required (under the FCA's DISP rules) to make clear to customers how they can refer their complaint to the FOS. In our view, the FOS does not currently have the expertise to consider SQD issues relating to vehicles nor should we expect it to given it provides a 'financial' ombudsman service. We understand that the FOS already refers a volume of SQD cases to The Motor Ombudsman (TMO) for review before making decisions.

- **If the TMO becomes a mandatory ADR provider then finance providers should no longer need to hold responsibility for accepting SQD complaints**. The majority of complaints our members receive relate to SQDs rather than the finance product, payments or any other finance related function that motor finance providers have direct control over. We therefore take the view that if a mandated TMO was in place then responsibility for SQD complaints should fully shift towards retailers and garages who are in control of determining the vehicle's quality prior to sale and arranging repairs to rectify issues. There would be no further need for motor finance providers to continue holding joint and several liability over the quality of the vehicles they finance. This would lead to duplication of effort and confusion for consumers about who their complaints should be brought to if they are dissatisfied. We would urge Government, in partnership with the FCA and FOS to recognise these changes in law as part of this consultation and the regulatory reform of UK financial services.

- **Changes to ADR process, timings and consistency amongst ADR providers –** we would support the proposals to introduce a nominal fee and upper claims limit across mandated ADR schemes. Under the FOS mandated scheme, in some cases, our members do see complainants rejecting compensation to see if they can obtain higher levels of redress from the FOS. Despite the requirements our members have to signpost financed vehicle complaints to the FOS, consumers do have the option currently to complain to the TMO about the quality of their vehicle where the retailer or garage is accredited under the TMO's Codes of Practice. Mandatory ADR provision would therefore require consistency in approach between the TMO and FOS.

Therefore we take the view that if proposals for introducing a nominal fee and setting an upper claims limit apply to the TMO they should also apply to the FOS. We understand that BEIS may not have the jurisdiction to implement this across complaint schemes that already mandated. However, having in place varying rules relating to ADR schemes, particularly where they cross-over such as in the motor finance/retail markets, would confuse both consumers and businesses.

- Changes to ADR processes in the financial services sector would require changes to the FCA's DISP rules and potentially the Financial Services and Market Act 2010. However, we would urge Government, to work with the FCA and FOS to ensure that such proposals are consistently applied to the FOS along with all other providers. We recommend these areas should be considered in setting consistent standards in the provision of ADR:
    - **Consistency on scheme rules –** as set out above with regards to introduction of a nominal fee and upper claims limit.
    - **Minimum training requirements** of staff and expertise in the areas that case handlers, adjudicators and Ombudsman hold prior to them judging complaints.
    - **Complaint data standards** – ensuring that ADR providers publish useful, granular data that industry can use to enable firms to benchmark against and improve its products/services and complaints handling processes. This would likely require data entry standards across ADR providers.
    - **Consistency around key principles** and the basis upon which ADR providers judge complaints.
    - **How ADR providers can engage with firms to learn about particular industry issues whilst maintaining independence and impartiality**. For example; an ADR provider having a ring-fenced team that engages with industry, passes on knowledge to ADR colleagues that judge complaints but who do not judge complaints themselves.

Finance & Leasing Association
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