



HM Treasury

Improving access to SME credit data:

summary of responses

June 2014



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Introduction

1.1 In December 2013 the government published a consultation *Competition in banking: improving access to SME credit data* which set out its proposal to require banks to share information on their Small and Medium sized Enterprise (SME) customers with other lenders through Credit Reference Agencies. This followed the announcement at the 2013 Budget that the government would “investigate options for improving access to SME credit data to make it easier for newer lenders to assess applications for loans to smaller businesses”.

1.2 The proposals are intended to improve the ability of challenger banks and alternative finance providers to conduct accurate SME risk assessments and, by levelling the playing field between providers, make it easier for SMEs to seek a loan from a lender other than their bank. A better understanding of the SME sector should also stimulate competition and innovation in SME lending, improving the cost and quality of services offered.

1.3 The consultation ran until 21 February. The consultation was clear that the government has identified that this is a problem which requires a legislative solution. The consultation therefore focused on the detail of what the legislation should cover, in particular:

- which banks should be required to share data
- what data should be shared
- with which CRAs should data be shared
- whether information should be shared with some or all CRAS
- which entities would have access to the data
- what safeguards would be required

1.4 The government received over 30 responses to *Competition in banking: improving access to SME credit data*. Respondents included major banks, challenger banks, alternative finance providers, Credit Reference Agencies (CRAs), business groups, trade associations and other interested parties.

1.5 Chapter 2 summarises the responses received and highlights where changes have been made to take the views of respondents into account.

1.6 The government welcomes the constructive and valuable contributions made by stakeholders throughout the consultation process.

1.7 A list of respondents can be found at Annex A.

Next steps

1.8 The government intends to deliver this policy through legislation in the Small Business, Enterprise and Employment Bill.

1.9 As noted in the consultation, the Bank of England has been considering the case for establishing a credit register in the United Kingdom. On May 30 the Bank of England published a Discussion Paper¹ which considers whether or not there are any further incremental improvements that could be made to the availability of commercial credit data, both to providers of credit and policymakers. The Bank of England welcomes comments and views on the material set out in the Paper. The deadline for responses is 29 August 2014.

Key themes

1.10 The government welcomes the widespread support for its proposals to improve access to SME credit data from respondents to the consultation.

1.11 On balance, the government's proposals for the method of improving access to SME credit data were seen as both appropriate and sufficient to deliver the government's objective. The majority of respondents acknowledged the value of data sharing and the importance of ensuring equal access to the data that is shared through CRAs.

All respondents also agreed that it was important to ensure that SMEs have confidence in how their data is being used and that the necessary protections are in place to safeguard the quality of that data. Chapter 2 outlines how these protections will be provided.

¹ See <http://www.bankofengland.co.uk/publications/Documents/news/2014/dp300514.pdf>

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Summary of responses

What information should be shared?

2.1 The government recognised that some SMEs might have concerns about a legislative requirement for banks to share data with Credit Reference Agencies (CRAs). The consultation document therefore asked whether data should only be shared where an SME gives its permission.

Question 1: Currently any individual or business has to give its consent for its data to be shared with CRAs. Do you agree that it is important that legislation mandates that data can only be shared where an SME gives its permission?

2.2 The majority of respondents agreed with the principle that data should only be shared when an SME has given its permission. In general this permission was understood to be given through the SME agreeing to the terms and conditions of a product, including those that allowed data to be shared with a CRA. Respondents noted that most financial institutions already require customers to agree that data would be shared with CRAs as part of the terms and conditions of offering their services. Respondents said that this was a recognised and established industry procedure.

2.3 Responses from CRAs highlighted that the legal basis for the sharing of credit data (where that data constitutes personal data for the purposes of the Data Protection Act) is the “legitimate interests” condition. This requires that notification is given to the individual at the point of application, and outlines how their performance data will be shared with the CRA, along with listing the purposes for which such data can be used.

2.4 Responses from CRAs all agreed that all SME data, whether personal data for the purposes of the Data Protection Act or not, should only be shared where clear and transparent notification has been provided to the SME at the point of application for a facility.

Government response:

2.5 The government is of the opinion that data should only be shared with a CRA where the SME has agreed terms and conditions that allow for that data to be shared. Given that such terms and conditions are already included by banks as a matter of policy, most products will already be covered.

2.6 There will, however, be SMEs whose products are not covered by such current terms and conditions, because the product in question (for example a current account) dates back to before these conditions were included by their bank as standard. The government notes that the number of SME products that fall in this category will diminish over time as products expire and are renewed, or terms are varied.

2.7 The proposed power to make regulations will enable the government, if necessary, to require banks to contact any SME customers not covered by existing terms and conditions to seek agreement to share data for the purposes of the legislation. This would ensure that, should coverage not increase over time, or a bank remove the relevant terms and conditions from its products, the option of requiring banks to seek agreement for the purposes of sharing data under the legislation will be available.

Sharing business current account data

2.8 The consultation document outlined that SME current account data is one of the most valuable sources of financial data in assessing the creditworthiness of an SME; that this data is not widely available; and asked whether the sharing of key indicators of current account performance data should be mandatory.

2.9 The document also highlighted that transaction level data showing the payments in and out of a bank account was also potentially useful and asked whether the sharing of this data should also be mandatory.

Question 2: Do you agree that the sharing of key indicators of current account performance data should be mandatory?

Question 3: Do you also agree that more granular current account data should be shared? If the answer to this is 'yes', do you think this should be as granular as turnover data showing payments in and out of an SMEs account?

2.10 The vast majority of respondents to the consultation agreed that key indicators of current account data should be shared.

2.11 The majority of business groups were in favour of government mandating the sharing of key indicators of current account performance data. In general, they were of the view that this should mirror as closely as possible the data that is already shared on personal current accounts.

2.12 The major banks supported the sharing of key indicators of current account performance, noting that this would help to achieve the government's policy objective. Responses from most challenger banks and alternative finance providers also indicated that the sharing of key indicators should be mandatory, citing the benefits of this data for the purposes of credit risk assessment.

2.13 Responses from CRAs highlighted that the sharing of business current account data under the current Principles of Reciprocity is sparse at present, and that there is currently no industry wide initiative which shares business current account credit turnover data with multiple CRAs.

2.14 Respondents were more mixed on the question of whether transaction level data showing the payments in and out of a bank account should be shared.

2.15 Business group respondents were split on whether granular current account data should be shared, with some in favour of the proposal and some against. Those that did not support the sharing of granular current account data noted that this could raise privacy concerns for the counterparties concerned.

2.16 The major banks noted that the government could achieve its policy objective without requiring that this level of data be shared, and also observed that this would have both cost implications and implications for the implementation timetable.

2.17 CRA respondents did note that the sharing of transaction level current account data would produce more comprehensive data sets but also noted that this level of data is not shared elsewhere and that it would involve considerable time and development for the CRA to be able to use the data. One CRA respondent was of the view that considerable value would be gained from sharing key indicators showing the total monthly credit and debit amounts.

2.18 Some challenger banks and alternative finance providers were in favour of requiring granular current account data to be shared, outlining the principle that the more granular the data, the more use it would be for assessing credit risk. Overall, however, challenger banks and alternative finance providers also highlighted that the more granular the data, the greater the potential

processing requirements, and that great value could be gained from sharing any current account data on SMEs, given that business current account data on SMEs is not widely shared at present.

Government response:

2.19 The vast majority of respondents agreed that the sharing of key indicators of business current account data with CRAs would improve SME risk assessment and help level the playing field for challenger and alternative finance providers. The government therefore intends to make the sharing of key indicators of business current account performance mandatory.

2.20 The government does not propose to mandate the sharing of transaction level current account data. The data that will be shared under the government's proposal is broadly in line with the sharing of data by banks with CRAs on personal current accounts. The government believes that its proposal strikes the right balance; achieving the policy objective by significantly improving the quality of data shared whilst mitigating any privacy concerns that could arise from the sharing of transaction level data and allowing for timely implementation.

Sharing wider credit data

2.21 The consultation document noted that in addition to business current account information, wider credit data on SME customers (for example payment performance and default data on loans, credit cards and overdrafts) is also essential in assessing credit risk. The consultation noted that currently the major banks share much of this data with CRAs but that sharing is inconsistent, and asked for views on whether the sharing of this data should also be mandatory.

Question 4: In addition to taking action on the sharing of business current account data, do you think there is a case for taking action to ensure that all providers of credit share wider credit data on their SME customers with the CRAs? If so can you explain why?

2.22 The majority of submissions supported the idea of government mandating the sharing of wider credit data. Those in favour included most major banks, challenger banks and alternative finance providers. Respondents highlighted that data should be shared in a consistent manner, and the majority of respondents again highlighted that it was important for credit providers to share what data they could.

2.23 All responses from the business groups highlighted the usefulness of wider credit data in assessing credit risk. Several supported mandatory sharing, highlighting in particular the importance of positive payment performance as well as default data. One respondent was not in favour of requiring wider data to be shared at present and considered that the focus should be on current account data. The respondent noted, however, that sharing this data should not be ruled out in future.

2.24 Responses from CRAs also recognised the value of wider credit data for credit scoring purposes, however there was mixed response to making the sharing of this data mandatory. It was noted that some wider credit data is currently widely shared under a voluntary system which is working well, and therefore concluded that there was no need for a legislative solution.

Government response:

2.25 The government notes that the sharing of data on credit facilities such as loans and credit cards is better established than the sharing of data on business current accounts. However, consultation has shown that this sharing is inconsistent and could be improved. In particular, some lenders only share 'negative' data (showing missed payments) but not data showing positive 'payment' performance (payments made). The government therefore considers that it is appropriate to mandate the sharing of this data. This will ensure consistency in the information banks share with CRAs.

Market threshold

2.26 The consultation document asked for views on whether there should be a market share threshold below which a credit provider is exempt from sharing credit data, and if respondents agreed, asked for views on the level at which this should be set.

Question 5: If action is taken on the sharing of wider credit data, does there need to be a market share threshold below which a credit provider is exempt from sharing this information? If the answer to this is 'yes', at what level should this be set?

2.27 Responses to this question varied significantly. The majority of major banks thought that the requirements should apply to all credit providers, arguing that introducing a market share threshold would not be in the best interests of SMEs because some data would not be shared. They also commented that responsible lending involved data sharing and that a market share threshold therefore was not compatible with this objective.

2.28 CRA respondents were also of the view that a market share threshold was unnecessary. They noted that under the current voluntary system all credit providers should share data, that the costs of sharing were low and that they did not consider the market share of a credit provider to be relevant in the context of affordability and responsible lending.

2.29 The majority of challenger banks and alternative finance providers were in favour of a market threshold. Respondents argued that the costs of having to establish commercial relationships to share data with multiple CRAs could disproportionately affect smaller lenders. This could itself act as a barrier to entry in the SME lending market.

2.30 Similarly business groups noted that any legislation must strike the right balance when creating additional costs for credit providers as these will always disproportionately affect smaller credit providers. Business groups were of the view that, given this, proceeding without a market share threshold could be inconsistent with a policy objective of increasing competition within a concentrated SME banking market.

Government response:

2.31 The government agrees that responsible lending involves sharing data.

2.32 However it is important to consider how this requirement should be applied. The question of whether or not a market share threshold is suitable relates to the specific question of which lenders should be required to share with multiple CRAs under the legislation. This is distinct from the question of whether lenders should have to share their data with an individual CRA with which they have a commercial relationship at the point they wish to access data shared by other lenders (See paragraph 1.72 below for more detail on this point).

2.33 On the first of these questions, the government's view is that a market share threshold is appropriate. The major banks account for the vast majority of SME lending and consequently hold a significant amount of the data that should be shared. The government considers that the cost of having to establish relationships with multiple CRAs would disproportionately affect smaller credit providers and could therefore act as a barrier to entry in the SME lending market.

2.34 Given the lack of comprehensive publically available data on banks' share of the SME lending market, the government intends to designate those banks that account for the majority of SME lending on the advice of a third party, such as the Bank of England. This follows the designation model used for the designation of systemic payments systems by the Payments System Regulator. Capturing these banks achieves the policy objective of opening up competition in SME lending, without imposing the burden of sharing data with multiple CRAs on smaller credit providers.

Sharing of non-financial information

2.35 The consultation noted that market participants had indicated that other performance related data, not shared with lenders, could add significant value in assessing creditworthiness. For example, CRAs currently receive some payment performance information on SMEs from other SMEs based on their accounts receivable ledgers ('trade credit data'). The consultation stated that this information is only available to SME subscribers to CRA data, not financial providers, since financial providers are unable to submit this information themselves.

2.36 The consultation therefore asked whether it would also be helpful to mandate that non-financial information currently shared between SMEs through CRAs should be shared with finance providers.

Question 6: Would it also be helpful to mandate that non-financial information currently shared between SMEs through CRAs must be shared with finance providers?

2.37 Consultation has revealed that trade credit data is not shared on a restricted basis. In other words, all lenders will benefit from any such data that is shared (either in the form of a credit score or through access to the underlying data).

2.38 Some respondents interpreted this question as asking whether it should be mandatory for SMEs to share trade credit data with CRAs. There was no support for this as it was seen as difficult to implement and as imposing unacceptable burdens on SMEs.

Government response:

2.39 The government notes that non-financial credit information is already shared with CRAs and incorporated into generic scoring models that are widely available. It therefore does not consider that legislation is required in this area.

How should information be shared?

2.40 The consultation document outlined that at present banks share credit data with one or more CRA of their choosing. The document asked for views on whether the data that the government proposed should be shared on a mandatory basis should be shared with all CRAs or whether it would be sufficient for the data to continue to be shared with one or more CRA.

Question 7: Do you think that credit providers should share data with all of the CRAs or do you think it is enough for the data to be shared with one or more of the CRAs? If your answer is to limit this to one or more CRA, should that CRA be required to share that information with other CRAs?

2.41 Responses were mixed on this question. In general respondents were divided between those that felt that that data should be shared with one CRA, which should then be required to share the data with other CRAs; those that thought it should be shared with just the CRA with which the bank in question has a commercial relationship, and those that thought data should be shared with all CRAs. All respondents agreed that just as important as whether the data was shared with one or all CRAs was that it must only be provided to CRAs that will use it properly and which have secure systems and safeguards against misuse.

2.42 The majority of major banks were in favour of data being shared with one CRA with CRAs then being required to share this data with other CRAs. However the possible impediments to this were also acknowledged. The British Bankers' Association proposed that either each bank should only have to share data with the CRA with which it has a commercial relationship, with that CRA mandated to share with the others, or that banks should be required to share the information with any CRA that has been deemed eligible and appears on a list of approved CRAs, which government should compile and own.

2.43 Responses from challenger banks and alternative finance providers were also mixed. Respondents noted that if banks were only required to share with one or 'at least one' CRA the policy could have the effect of consolidating the position of the current market leading CRAs and present a barrier to new entrants. By contrast, respondents noted that sharing with all qualifying CRAs could improve competition within the CRA sector.

2.44 In the main, CRAs were opposed to sharing data amongst themselves, citing the negative impact this would have on the functioning of, and competition within, the current CRA market. One CRA highlighted that given CRAs compete on the basis of factors such as data breadth and quality, value added products such as scoring and delivery systems, and non-tangible qualities such as trust and reputation, it would be unacceptable to have to provide competitors with data. All CRAs focused on the use of the data by CRAs, outlining that data should be provided to approved CRAs, so that SMEs and banks know that the data will not be misused.

2.45 One CRA agreed that credit providers should be required to share data with all recognised CRAs that make a data request. It added that this would ensure data was made available to CRAs as soon as they are in a position to receive it, recognising that some CRAs will need to invest more heavily than others to get to that position.

2.46 The same respondent noted that legislation should not require sharing with only one or 'one or more' CRA. It noted that such a requirement was introduced into UK legislation in the form of the Competition Commission's Order to require the main providers of Home Credit to share data with a minimum of two CRAs. This resulted in providers often sticking to the letter of the Order and only sharing with two consumer CRAs and not following the standard and now common consumer credit industry best practice of sharing with all three consumer CRAs.

2.47 Responses from the majority of business groups also said that consideration should be given to the ability of CRAs to safely and efficiently handle the data. The over-riding principle, however, was that no CRA was placed at either an advantage or disadvantage as a result of the legislation.

Government response:

2.48 The government agrees that no CRA should be placed at either an advantage or disadvantage as a result of the government's legislation. Requiring that banks only share with one CRA would be likely to solidify the current market structure to the detriment of competition. By contrast, improving competition in the CRA industry should have ancillary benefits for SMEs and lenders beyond the immediate objectives of the policy. The government therefore considers that banks should share data with all designated CRAs.

2.49 The government also recognises that designated banks will need to know which CRAs they are obliged to share data with, and that the data must also only go to CRAs that will use it properly and which have secure systems and safeguards against misuse. The provisions in the Bill will therefore enable regulations to provide for HM Treasury to designate the CRAs that will have access to the data. In doing so HM Treasury will seek the advice of, among others, the British Business Bank. These designations will be reviewed from time to time and CRAs will be able to apply for designation.

2.50 The government also recognises that it will take CRAs time to develop the systems to incorporate new data, and that this will differ across CRAs. Therefore the government will require banks to share data with designated CRAs as each designated CRA requests it.

Frequency of sharing

2.51 The consultation document also asked for views on the frequency of data sharing and on the time frame that the shared credit data needed to cover.

Question 8: How frequently do you think credit data should be shared?

Question 9: What time frame do you think the shared credit data needs to cover? Is data that goes back three months sufficient?

2.52 Almost all of the responses to the consultation agreed that data should be shared on a monthly basis. This reflects current industry practice, including the sharing of personal current account data. In its submission, the Information Commissioner's Office (ICO) also outlined that if information is shared too infrequently, its accuracy could be called into question.

2.53 The majority of respondents also said that that a degree of historical data should be shared when sharing current account data, in order to give a full picture of the activity in an SME's current account and to iron out seasonal changes in cash flow. Responses from the major banks highlighted the usefulness of 12 months' worth of current account data, but acknowledged the trade off between requiring a large amount of historic data from day one and the impact on implementation date.

2.54 One CRA noted that it considered three months data to be the absolute minimum timeframe required. It also noted that CRAs will build this history over time from the point at which banks are required to share this data.

2.55 Most challenger banks and alternative providers of finance also thought that 12 months worth of data should be provided. The majority of business groups and other respondents thought that 12 months was the appropriate time period.

Government response:

2.56 The government agrees that data should be provided on a monthly basis.

2.57 The government also thinks that for business current accounts it is important that historical data is provided on day one. This reflects the need to capture seasonal variations in cash flow in order to achieve a true picture of a SME's current account performance.

2.58 However, it is also important to note that CRAs will build this history over time from the point at which banks are required to share this data. The question of how much back data should be shared is therefore a transitional issue as CRAs will begin compiling this history from the point at which the legislation comes into effect. It is also important to consider the need for timely implementation.

2.59 Given the need for timely implementation and the transitional nature of this issue, the government intends to require banks to share six months of historic business current account data when they start to share data on a mandatory basis. The government believes that this proposal strikes the right balance; improving the quality of data shared and ironing out seasonality whilst ensuring an early implementation date.

2.60 The government does not consider that it is necessary to share historic data for other credit facilities (such as loans and credit cards). Much of this data is already shared and seasonality is also less of an issue for payments for loan and credit facilities, given that these are often regular standardised payments. Therefore the government does not intend to introduce a requirement to provide historic data on products such as loans and credit cards.

Who should have access to this data?

2.61 The consultation document asked whether the data on SMEs that is shared with CRAs should be accessible to all providers of SME credit. In addition, the consultation asked whether data

should only be shared by the CRA when an SME has approached a provider of SME credit seeking finance and only when the SME has given that provider permission to access the information.

Question 10: Do you agree that all of the data that is shared with the CRAs should be made available to all providers of SME credit?

Question 11: Do you think that only SME credit providers should be able to access this data?

Question 12: Do you agree that credit providers should only be able to access this data where the SME has approached it seeking finance and the SME has given that provider permission to access this information? If not, when do you think that credit providers should be able to access this data?

2.62 The majority of respondents thought that data should be available to all providers of SME credit. Respondents agreed that it was essential that there was a level playing field for alternative finance providers in terms of the data CRAs hold. All respondents agreed that credit providers should only have access to the data where they had the permission of the SME, for example at the point of applying for a loan.

2.63 This mirrors current industry practice, where a search of the credit file can only take place with the consent of the data subject, and is consistent with the Data Protection Act in respect of personal data. The ICO response noted that it would appear sensible that a credit provider is given access to the data about an SME when the SME has approached them seeking finance.

2.64 The major banks were strongly in favour of limiting access to this data to providers of SME credit, with one response outlining that data should not be shared with any companies offering wider services than credit. They were also in favour of only allowing access for the purposes of making a credit decision. The majority of responses from challenger banks and alternative finance providers also thought that only SME credit providers should be able to access this data.

2.65 One response proposed that credit providers should be able to access the data without permission to allow them to assess the market more widely - to further boost competition in the SME lending market.

2.66 The majority of respondents also noted that it was important that credit providers should continue to share the data they have. Major banks and challenger banks and business groups all agreed that this was important. All CRAs also agreed it was important to maintain this principle. It was felt that this would ensure responsible sharing of credit data by all lenders, preventing either free riding and ensure responsible lending.

2.67 Several CRAs did note, however, that the legislation should afford any new entrants to the market a period of grace before they were required to share data. This would enable fledgling businesses to implement the required systems and processes to ensure that they can provide the necessary information.

2.68 Business groups also thought that only SME credit providers should be able to access the data. In general business groups thought that this should be where the SME has given permission at the point of applying for credit.

Government response:

2.69 The government considers that it is essential that there is a level playing field for alternative finance providers in terms of the data CRAs hold. This will remove the current barrier whereby lenders that do not offer certain products (for example business current accounts) are prevented from benefitting from the current account data shared by the major banks.

2.70 The consultation did not consider whether credit information should be made available to non-financial or indirect providers of credit, such as businesses providing trade credit or investors in securitisations. The recently published Bank of England Discussion Paper considers the case for giving these providers some access to credit data¹.

2.71 The government agrees that access should only be provided where the SME has given permission for its data to be accessed. This will ensure that credit providers are able to access this data at the point at which an SME has approached them to seek finance but that no lender is able to use the data to contact SMEs on a speculative basis, for example through 'cold calling'.

2.72 The government also agrees that it is important that lenders themselves continue to share data, as happens currently. The government will therefore provide, in legislation, an obligation on designated CRAs to provide equal access to the data they hold where the lender in question has the permission of the SME and where that lender is willing to share the data it has on its own credit facilities. Crucially, the fact that a lender does not itself offer a facility (for example a current account) will not be a reason to refuse equal access. The government is of the view that this will help maintain the benefits of the current reciprocal system while removing the current barriers to entry that are embedded within the current closed user groups through which data is shared.

2.73 The government is also aware, however, that a new credit provider may need time to establish the necessary procedures to share data, or to collect sufficient data on their borrowers to share. Therefore in order to ensure that no barrier to entry is created, the government proposes to allow a credit provider to benefit from equal access for one year from the point at which they commit to sharing data.

2.74 During the consultation it also became apparent that significant benefits could be realised through allowing the Bank of England access to the data being shared by banks under this legislation. This will complement the data that the Bank already receives from reporting banks and by its oversight of the payments system. This could support assessments of credit conditions and inform monetary and macroprudential policy. And work by the Bank to develop a much deeper understanding of the SME market would also support the work of HM Treasury and the British Business Bank. For example, it would provide a much fuller understanding of the regional and sectoral allocation of credit, of what type SMEs are getting credit and the risk profiles of different SMEs.

2.75 This is in line with the Bank of England's existing statutory information gathering powers. As with those powers, any access to personal data would be subject to the provisions of the Data Protection Act. The government therefore intends to allow the Bank of England access to the data shared by banks with CRAs.

SME protections

2.76 The government believes it is essential that SMEs have confidence in how their data is being used and that the necessary protections are in place to safeguard the quality of that data. As well as ensuring that data is only provided to CRAs where the SME has agreed terms and conditions allowing that data to be shared, and ensuring that SME consent is required before a credit provider can access that data, paragraphs 1.88 to 1.93 below set out the protections that will be put in place.

¹ See <http://www.bankofengland.co.uk/publications/Documents/news/2014/dp300514.pdf>

2.77 HM Treasury will only designate CRAs that have the necessary policies in place to allow SMEs to access and challenge their data. This will be an essential condition of designation and reviewed from time to time.

2.78 This will be reinforced by a provision that will allow any SME to take legal action in respect of any incorrect data held about them by a designated CRA. This will allow a court to order the CRA to rectify, block, erase or destroy any incorrect data.

2.79 For the vast majority of SMEs (those which count as ‘consumers’ under the Consumer Credit Act²), however, the right to access the data held about them is enshrined in statute through the Data Protection Act (DPA) and the Consumer Credit Act (CCA). The DPA and CCA provide these SMEs with a right to access their credit file. They also place an obligation on the CRA to respond to any disputes with respect to data by either amending or removing the data in question, or notifying the party that has disputed the data that it intends to take no action (with a right of referral to the Information Commissioner or Financial Conduct Authority if either party is not content).

2.80 Under the DPA and CCA, however, different levels of protection for the SME apply depending on whether or not the CRA in question is regulated by the Financial Conduct Authority (FCA). A CRA is only FCA regulated if its business primarily consists of providing data on ‘consumers’. Given that there are CRAs that primarily provide data on companies, and which are therefore not FCA regulated, the government considers it essential that the same protections apply for SMEs in their dealings with any CRA designated by HM Treasury. The government therefore proposes to extend the application of both the Data Protection Act and the Consumer Credit Act to ensure the same SME protections apply across the board in respect of all designated CRAs.

2.81 Finally, the government also considers that it is appropriate to strengthen the protections afforded to SMEs through the Financial Ombudsman Service (FOS). The FOS provides a free independent dispute resolution service for individuals and micro-businesses. Its decisions are binding on the firm concerned. Currently an SME only has guaranteed recourse to the FOS when it is dealing with a regulated CRA, and only where it is a sole trader, partnership of three or fewer, or an unincorporated body.

2.82 The government therefore intends to make two changes to the remit of the FOS in respect of disputes with designated CRAs. First, the government intends to amend the remit of the FOS so that an SME can seek a FOS decision when dealing with *any* designated CRA, whether FCA regulated or not. Second the government will widen the pool of SMEs that can have recourse to FOS in respect of credit referencing to include all those SMEs that generally have recourse to the FOS for other purposes (currently those which have an annual turnover of less than 2 million Euros and fewer than ten employees). This will ensure that SMEs whose information is held by designated CRAs have the same level of protection under the FOS as they do when borrowing from a bank.

Enforcement

2.83 The legislation will be enforced by the Financial Conduct Authority (FCA). Because the provision of credit data on companies is not a regulated activity under the Financial Services and Markets Act, the government intends to create a new requirement for the FCA to monitor and enforce compliance with the regulations. The FCA will be responsible for ensuring that designated banks are sharing data and that designated CRAs are ensuring equal access to it.

² Sole traders, partnerships of three or fewer, or unincorporated bodies.



List of respondents

Asset Based Finance Association

The Confederation of British Industry

Barclays

The UK Cards Association

British Bankers' Association

Tusmor

Business Information Providers Association

Vocalink

Capital One

118 118 Money

Close Brothers

Credit Data Research Ltd

Creditsafe Group

Danske Bank

Dun & Bradstreet

EEF

Everline

Equifax

Experian

Federation of Small Businesses

Finance and Leasing Association

Forum for Private Business

Funding Circle

GE Capital Bank Limited

Graydon UK Ltd

HSBC

Information Commissioner's Office

Institute of Credit Management

Jordans

Lloyds Banking Group

Premier European Capital

Santander UK plc

HM Treasury contacts

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