Cabot FINANCIAL

23 March 2011

Financial Regulation Strategy
HM Treasury
1 Horse Guards Parade
London
SW1A 2HQ

Dear Sirs

Response to "A new approach to financial regulation: consultation on reforming the consumer credit regime"

We write in relation to the above consultation which was issued for industry response to consider its preferred method on reforming the current consumer credit regime, which is currently regulated by statute, namely the Consumer Credit Act 1974 ("the Act") and with the Office of Fair Trading as current appointed regulator.

In summary, Cabot is strongly of the opinion that Option 2 is the best option and that the consumer credit regime should remain under the current regulatory framework. Although we are strongly of the opinion that the current regulatory framework should be adopted, we do believe there is scope to simplify the Act and its subordinate Regulations and therefore we would recommend a re-draft of the Act. We also believe that there may be scope for the Financial Conduct Authority to take over the role of the Office of Fair Trading to ensure the market retains the legal certainty of the current regulation with appropriate and proportionate enforcement, however, we believe that adopting a FSA-style regulatory regime, in essence a principle based approach, would have a serious detrimental impact for the industry and consumers alike. We believe that the consumer credit regime is well-developed and fair and is also strongly reliant on a judicial approach, with strict interpretation by the Courts and this should remain. Furthermore in times of economic uncertainty, the change in the regulatory landscape to fit an FSA-style regime, would in our opinion see the economy deteriorate even further with the prospect of many businesses, especially SMEs and sole traders, exiting the industry altogether.

Introduction

Cabot Financial is an industry leader in the consumer debt purchase industry in the United Kingdom having purchased and managed non-performing overdue debts from banks and other major lending companies since 1998. It is our aim to find solutions to resolve its customers' long outstanding debt problems and to assist in putting those customers' finances back on track. Cabot Financial does not undertake any contingency debt collection activities and only collects for own account.

Cabot Financial employs over 400 employees in its head office in Kent to assist it with its operations and operates a satellite office in Rugby to deal with its litigation matters.

Cabot Financial is a member of the Credit Services Association ("CSA"), the Consumer Credit Trade Association ("CCTA") and the Civil Court Users Association ("CCUA"). Furthermore, Cabot Financial was a founding member of the Debt Buyers and Sellers Group ("DBSG") and regularly attends and participates in the Working Parties that all the above Associations organise. Cabot Financial is also vocal in the industry in promoting industry best practice and ensuring legal and regulatory compliance whilst maximising every opportunity in the industry.

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As of February 2011, Cabot Financial has 2,623,452 active accounts with a face value of £5,266,561,036 and during 2010 Cabot Financial collected in excess of £85 million on its portfolios.

Response to Consultation

We understand and are concerned that the preferred option for Government is Option 1 which is based on the regulatory regime of the Financial Services & Markets Act 2000 ("FSMA"), that could see all companies involved in the credit industry, large and small, operating under FSA styled 'rule' based regulation.

As you will note, the consumer credit regime has undergone root and branch changes over the last 35 years culminating, more so of late with the implementation of the Consumer Credit Act 2006 (fully implemented on 1 October 2008) and more recently the Consumer Credit Directive (implemented on 1 February 2011).

We believe that the current regulator of consumer credit, the Office of Fair Trading ("OFT") has been provided with the appropriate tools of regulation and enforcement which means that they have more than adequate means of controlling the market in a proportionate and appropriate way whilst taking action against any 'rogue traders' within the market. The consultation paper proposes the transfer of the OFT to operate under the Financial Conduct Authority ("FCA"), alongside the FSA. Although we believe there is scope to transfer the duties of the OFT to the FCA to create one regulator, we would stress that the duties of consumer credit should remain fundamentally separate to the FSA style regime and therefore have 2 tranches within the FCA, namely FSA style regime and Consumer Credit regime. We are seriously concerned that a relatively successful model for regulating consumer credit is potentially once again facing further major change thereby creating concerns for the industry and consumer alike.

The consultation paper goes much further than the transfer, as it proposes to apply to the consumer credit market the FSA's current approach in the retail deposit market. Without a more proportionate approach this is unlikely to work, because of the fundamental difference between credit, where for the avoidance of doubt the risk lies with the lender, and banking/saving, where for the avoidance of doubt the main risk lies with the depositor. Needless to say, compliance and operational costs will increase significantly. Furthermore, supervision will intervene far more under the new regulator and it is important to note that it is the industry that contributes to the economy and further regulation and supervision could see decreasing levels of contribution to the economy in an already stressed economic climate.

We do not feel that the consultation document, or the impact assessment, presents any compelling evidence to move to a FSMA style regime for businesses currently wholly regulated by the OFT, especially those that are considered to be SMEs. We feel that many unintended consequences could arise as a result of the change. Increased costs and regulation could force some smaller organisations, or sole traders to exit the market. Furthermore, Government's focus appears to be on the lending and banking sectors but it is not apparent that Government places much emphasis on the increased activity in the debt collection and debt purchase sector, which although under the same regulatory regime of the Act and the OFT, operates fundamentally different.

The provision of consumer credit has risen considerably in recent decades and enabled consumers to access products and services to suit their lifestyles. As a direct result of the negative impact of 'credit crunch', bank funding to the industry, especially the SME sector in particular, has been severely curtailed, resulting in a significant downturn in lending. Consumer credit has hugely contributed to the positive growth of the UK economy over the last twenty years, within a highly competitive and innovative market.

The cessation of many credit products is currently stifling growth, and further regulation, or even uncertainty about regulation going forward will only exacerbate this.

Used wisely, consumer credit also helps consumers to smooth the peaks and troughs in income and expenditure, and allows consumers to manage their finances in a way that suits them.

Statistics published by Business Innovation & Skills ("BIS") in October 2010 (http://.stats.bis.gov.uk) show that the SMEs together accounted for 99.9% of all enterprises, 59.8% of private sector employment and 49.0% of private sector turnover. Both the number of companies and the number of sole proprietorships rose, the former for the 11th successive year, the latter for the seventh successive year. Small enterprises alone, with 1 to 49 employees, accounted for 48.2% of employment and 37.5% of turnover. Addressing the consumer credit SMEs, paragraph 3.1 of the consultation paper suggests that just over one-third of OFT licensed firms are sole traders.

The proposed new regime will be the most radical change in consumer credit regulation for a generation. We believe that the massive changes that consumer credit has gone through in 1974, 2006 and recently with the implementation of the Consumer Credit Directive should not be changed again to fit FSMA 2000. Moreover, we believe that it would create uncertainty and disorder in the consumer credit market, to effect a change from regulation which provides for clear legal certainty to a, principles and rules based approach such as the FSA.

The standards expected by firms in the framework of the UK regulatory regime for consumer credit are some of the highest in Europe and the burden on SMEs in ensuring compliance is a large one. Banks, building societies and large finance houses have larger staffing levels and financial resources to cope with more onerous regulation for deposit takers where the risks are greater. For the SMEs simply keeping up with the required changes is expensive, as detailed regulations can be supplanted by guidance notes and additional actions are required when dealing with other Government agencies.

The changes currently outlined within the consultation paper, would be the most complicated and costly change for all parties. Large numbers of small businesses could be expected to leave the market (NB. over 33% of current credit licensees are sole traders). Many other lenders would in all probability withdraw from at least part of their current markets. In consequence, the UK's consumer credit markets would shrink considerably, credit availability would be restricted, and market competition significantly reduced. There would be an increase in the costs of borrowing as companies would have to pass on the higher cost of regulation under the new regime. The effects would almost certainly exceed those of the recent credit crunch, where availability and choice of products reduced dramatically. The low-income borrowers in particular would be most affected, with the real danger of financial exclusion becoming far greater.

As you are no doubt aware around 40% of all consumer lending is currently done by companies which are not banks. Within the body of the consultation paper is the proposal that capital adequacy requirements would be imposed on all lenders, which would impact on organisations that do not take, or use deposits to fund lending, for example organisations that operate in the debt collection and debt purchase sector. Similarly, much of the current consumer market lending is dependent on intermediaries. Making lenders responsible for the regulatory compliance of intermediaries would have a serious adverse effect on markets such as motor finance.

Our main areas of concern are:

- further unwarranted changes to consumer credit regulation
- the extension of the new regime to small business lending

- no consideration of Government for the debt collection and debt purchase sectors
- a requirement for all existing lenders to re-apply for authorisation for both existing and past business
- significantly higher regulatory fees
- the loss of the certainty of the legal position on the form, content and entering into loan agreements
- further disruption to business during the handover and changes
- lack of experience on consumer credit in Financial Conduct Authority
- potential loss of Trading Standards Authority experience

Consumer protection within consumer credit has been strengthened over the years and with the implementation of European Consumer Credit Directive, and the move towards maximum harmonisation consumers are even more protected. The level of complaints dealt with by the Financial Ombudsman Service ("FOS") for the lending, debt collection or debt purchase sectors are minute especially in comparison to number of loan agreements written. Companies are concerned about their reputation, and treat consumers fairly, with respect, empathy and dignity. The risk lies with the lender not the consumer, as no deposits are taken by the lenders outside of the banks, large finance houses and building societies. We believe that there is no compelling reason to move towards monitoring and reporting as consumers are already well protected.

The Coalition Government are continually stating their declared policy that enterprise and the SMEs are pivotal in the UK economy avoiding the real danger of a double dip recession. The Prime Minister has also stated that bureaucracy and regulatory red tape are the enemies of enterprise and that unnecessary regulation should be avoided at all costs. We believe that the changes that consumer credit has gone through in 1974, 2006 and now the implementation of the Consumer Credit Directive in February 2010 should not be changed yet again to fit FSMA 2000. Moreover, we believe that it would create uncertainty and disorder in the consumer credit market to change from regulation giving clear legal certainty to a, principles and rules based approach.

Yours sincerely

Willem Wellinghoff
Legal Counsel

CONSUMER PROTECTION & MARKETS AUTHORITY
[Financial Conduct Authority]

From: **Calando Finance Limited**

RESPONSE to

A new approach to financial regulation:

consultation on reforming the consumer credit regime

respond to:

financial.reform@hmtreasury.gsi.gov.uk

or

Financial Regulation Strategy
HM Treasury
1 Horse Guards Parade
London
SW1A 2HQ

16 March 2011

Consultation response from Calando Finance Ltd on "a new approach to financial regulation: consultation on reforming the consumer credit regime".

Calando Finance Limited is pleased to submit a response to the recent consultation on "a new approach to financial regulation: consultation on reforming the consumer credit regime." We understand and are concerned that the Governments preferred option is Option 1 which is based on the Financial Services & Markets Act [FSMA] 2000, that could see all companies involved in the credit industry, large and small, operating under FSA styled 'rule' based regulation. Consumer credit has undergone root and branch changes over the last 35 years culminating in the latest piece of regulation, the Consumer Credit Directive implemented in February of this year. We believe that the current regulator of consumer credit, the Office of Fair Trading [OFT] has been provided with the appropriate tools of regulation and enforcement which means that they have more than adequate means of controlling the market, in a proportionate and appropriate way whilst taking action against any 'rogue traders' within the market. The consultation paper proposes the transfer of the OFT to operate under the Financial Conduct Authority, alongside the FSA. We fail to see why a successful model for regulating consumer credit is potentially once again facing further major change thereby creating concerns for the Industry and consumer alike.

The consultation paper goes much further than the transfer, as it proposes to apply to the consumer credit market the FSA's current approach in the retail deposit market. Without a more proportionate approach this is unlikely to work, because of the fundamental difference between credit [where the risk lies with the lender] and banking/saving [where the main risk lies with the depositor]. Needless to say, compliance costs will increase significantly, and supervision will intervene far more under the new regulator.

We do not feel that the consultation document, or the impact assessment, presents any compelling evidence to move to a FSMA style regime for businesses currently wholly regulated by the OFT, especially those that are considered to be SMEs. We feel that many unintended consequences could arise as a result of the change. Increased costs and regulation could force some smaller organisations, or sole traders to exit the market.

The provision of consumer credit has risen considerably in recent decades and enabled consumers to access products and services to suit their lifestyles. As a direct result of the negative impact of 'credit crunch', bank funding to the SME sector in particular has been severely curtailed, resulting in a significant downturn in lending. Consumer credit has hugely contributed to the positive growth of the UK economy over the last twenty years, within a highly competitive and innovative market. The cessation of many credit products is currently stifling growth, and further regulation, or even uncertainty about regulation going forward will stifle much needed growth even more.

Used wisely, consumer credit also helps consumers to smooth the peaks and troughs in income and expenditure, and allows consumers to manage their finances in a way that suits them.

Our business falls into the "small to medium sized enterprise" (SME) category. Statistics published by Business Innovation & Skills [BIS] in October 2010 (http://.stats.bis.gov.uk) show that the SMEs together accounted for 99.9% of all enterprises, 59.8% of private sector employment and 49.0% of private sector turnover. Both the number of companies and the number of sole proprietorships rose, the former for the 11th successive year, the latter for the seventh successive year. Small enterprises alone, with 1 to 49 employees, accounted for 48.2% of employment and 37.5% of turnover. Addressing the consumer credit SMEs, paragraph 3.1 of the consultation paper suggests that just over one-third of OFT licensed firms are sole traders.

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The changes currently outlined within the consultation paper, would be the most complicated and costly change for all parties. Large numbers of small businesses could be expected to leave the market [over 33% of current credit licensees are sole traders]. Many other lenders would in all probability withdraw from at least part of their current markets. In consequence, the UK's consumer credit markets would shrink considerably, credit availability would be restricted, and market competition significantly reduced. There would be an increase in the costs of borrowing as companies would have to pass on the higher cost of regulation under the new regime. The effects would almost certainly exceed those of the recent credit crunch, where availability and choice of products reduced dramatically. The low-income borrowers in particular would be most affected, with the real danger of financial exclusion becoming far greater.

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Our main areas of concern are:

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We believe therefore that Option 2 is the best option and that consumer credit should remain under the current regulatory framework and body, preferably an OFT style that would allow the market to retain the legal certainty of the current regulation with appropriate and proportionate enforcement.

Yours sincerely

G Taylor

Georgina Taylor
Director

Part of the Callcredit Information Group

Callcredit response to HM Treasury and BIS joint consultation paper:

"A new approach to financial regulation: consultation on reforming the consumer credit regime"

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ABOUT CALLCREDIT

Callcredit is one of the UK's three consumer credit reference agencies, which facilitate the sharing of data on how people manage their repayment commitments. We offer solutions to business to establish the creditworthiness and verify the identity of individuals, alongside other related products and services. Services offered to the UK financial services industry include:

- Credit Risk Solutions
- Fraud and ID Solutions
- Marketing Solutions
- Consumer Solutions

Consumers have statutory access to the data held on their 'credit report' and we make optional online services available to meet more advanced consumer needs.

In the last few years the majority of the UK's sizeable lenders have moved to implement Callcredit products and services. The rate of growth of Callcredit's client base underlines the success of our approach.

Some areas where Callcredit has particular interests:

- **Identity Verification and Anti-Money Laundering** – Callcredit assists firms to meet their obligations to prevent money laundering, and to protect against fraud through identity verification.

- **Data Sharing** - Greater data sharing has been proposed as an important step in the detection and prevention of crime. Sharing can also support responsible lending, and combats financial exclusion by providing increased evidence of creditworthiness.

- **Over-Indebtedness** – Callcredit's unique consumer indebtedness initiative uses consolidated income and debt data to form a picture of personal affordability. It helps lenders to avoid extending new credit to consumers who may find it unsustainable. It also identifies where existing customers are taking on excessive commitments elsewhere, allowing early intervention and provision of suitable support.

- **Fairness in Collections** - Callcredit seeks to provide the best available tools to enable responsibility in collection activity. These assist creditors to correctly identify and treat consumers who fall into arrears.

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RESPONSE TO CONSULTATION

Summary

Callcredit welcomes the opportunity to respond to the consultation paper jointly issued by HM Treasury and the Department for Business, Innovation and Skills, ***"A new approach to financial regulation: consultation on reforming the consumer credit regime"***.

We do not provide a direct response to the questions presented in the paper. Although Callcredit currently holds a consumer credit licence, most of the areas discussed have little relevance to our operations as a consumer[1] credit reference agency.

This provides an initial basis to question whether consumer credit reference agencies (CCRAs) should, in future, be regulated by the Financial Conduct Authority (FCA).

Consumer credit referencing is the relevant and proportionate sharing of personal information. Much of this information relates to the handling of consumer credit commitments – but a significant part of it does not. Similarly, legitimate use of the shared information is not confined to the organisations which are proposed to be regulated by the FCA.

The need for consumer protection in credit referencing is very clear, but does not relate to consumers being charged for the provision of financial services. Neither is the impact of credit referencing limited to borrowing. It can extend to many other aspects of personal life, such as identity and residency verification, age verification, employment and tenancy checks.

Consumers deserve to have oversight of the security, accuracy and use of their personal data placed wholly and unambiguously with a dedicated regulator that has an unobstructed remit to ensure the protection of their information. This entity already exists – it is the Information Commissioner's Office.

Credit referencing – an overview

Effective credit referencing is vital for the ongoing flow of lending to individuals. Its importance manifests both from the perspective of the creditor (in creditworthiness assessment to ensure risk is correctly accounted for) and the borrower (in ensuring the responsible extension of credit appropriate to personal affordability).

The UK system of credit referencing is considered to be one of the best in the world, as has been acknowledged by the World Bank. This position has been reached as a result of a number of factors. Arguably the strongest asset to the industry has been the proven and effective self-regulatory regime controlling the sharing of payment performance information.

Use of shared account performance data in the UK is controlled by the Principles of Reciprocity, which provide guidance to ensure that data sharing is conducted on a non-competitive, non-discriminatory basis for a specific set of purposes which mirror the public interest. This guidance is under regular review to address changing needs and innovation. Ongoing development and

[1] Please note that, in the context of our response, "consumers" should be taken to mean individual persons, and not partnerships or other unincorporated bodies. This is a different meaning to that taken by the Consumer Credit Act.

policing is controlled by the Steering Committee on Reciprocity (SCOR), an industry body comprised of relevant experts from trade associations and the CCRAs.

Shared account data is not only unsecured credit data

Shared account performance data is central to effective credit referencing. It is not limited to data on Consumer Credit Act (CCA) regulated credit agreements and mortgage lending, but includes non-CCA regulated commitments such as telecommunications accounts and some student loans.

Increasingly, energy and water utilities providers are beginning to share payment performance data. There have also been suggestions that records from other sources, such as Council Tax payments, could potentially be shared in the future.

Credit reports are not limited to shared account data

Shared account performance data is not the only information which is recorded on an individual's credit file. Records of personal insolvency, county court judgements and electoral roll history, amongst other indicators, are also highly pertinent to creditworthiness.

The rights of individuals in respect of the treatment and accuracy of this data are no less compelling than those in respect of their ongoing financial commitments. For example, access to the full Electoral Roll is highly restricted and it can only be used for specified purposes by CCRAs.

Principal legislation on credit referencing is about data protection, not credit

The CCA encompasses only a minority of the legislation which controls the overall activity of credit referencing. In its guide "Do you need a credit licence?" the OFT specifies the key material provisions with which it would expect applicants for the credit reference agency category of licensing to demonstrate compliance. Examining these:

- Section 158 of the Consumer Credit Act 1974 discusses the duty of CCRAs to disclose filed information for a statutory fee of £2 and the preconditions for this duty to apply. This is a variation of the right of all individuals to request a copy of information held on them by any organisation for a statutory fee of £10.
- Section 159 addresses the correction of information found to be wrong for individuals, while section 160 addresses the alternative procedure for "business consumers".
- The Consumer Credit (Credit Reference Agency) Regulations 2000 supplement the original provisions of sections 157–160 of the CCA discussed above. They again deal with the disclosure to consumers of the contents of their 'credit report'.
- The Data Protection Act is also specified.

All these provisions relate primarily to data protection, as governed by the Information Commissioner's Office (ICO). To put this in context, it should be recalled that the Consumer Credit Act pre-dated the Data Protection Act, where these matters might otherwise have been addressed.

The future of data protection and the powers of the Information Commissioner's Office

Legislative proposals are expected from the European Commission in respect of an update of the Data Protection Directive before the end of 2011. While these proposals are currently in formation, there has been discussion of concepts including mandatory security breach notification and collective redress mechanisms. A high profile has also been given to increasing the enforcement powers of data protection authorities such as the ICO.

The European Commission has, separately, already presented demands to the UK in respect of strengthening the existing powers of the ICO under the current Data Protection Directive. These would add to the new powers that were made available to the ICO domestically last year.

Applying the Government's objectives for regime change to consumer credit referencing

The consultation paper presents the Government's objectives for its proposals. We now discuss these in terms of the implications for consumer credit referencing and our opinion that regulation of the sector should rest with the ICO:

- Exclusion of CCRAs from a future Financial Conduct Authority (FCA) regime would in no way impede the objective of **clarity, coherence and improved market oversight**. It is made clear in section 1.17 that this objective is intended to address the current split between the FSA regime covering mortgages and the OFT regime covering consumer credit.

  Coherence of approach to consumer credit referencing can be achieved by placing complete responsibility for its regulation with the ICO. Dividing responsibility for this sector between the ICO and the FCA, which is what would otherwise occur, risks a reduction in coherence through the hazard of dual regulation.

- The need to ensure **effective and appropriate consumer protection** in consumer credit referencing equates directly to the need for consumer rights and protection in respect of personal data. This sits naturally with the ICO, and further update in the scope of data protection legislation is already expected.

  The primary discrepancy created through this route would be the removal of the current need to satisfy the OFT of fitness to hold the appropriate category of consumer credit licence. An alternative would be required. This could be met through modification of the Data Protection Licence regime, ensuring equivalent or greater levels of consumer safeguarding.

  Removing CCRAs from a future FCA regime would not prevent the FCA from regulating the way in which CCRA information is used by lenders in credit assessment or management, should a situation arise where consumer detriment was perceived. Highly effective self regulation, however, already exists here through SCOR and the Principles of Reciprocity. The consultation paper states (in 1.15) that *"Self-regulation... in many instances can provide a preferable alternative to regulation"*

- Allowing CCRA operation to be clearly defined as the responsibility of a single specialist regulator would clearly meet the objective of exercising **opportunities for simplification and deregulation**.

- Importing CCRA regulation from the OFT into a new and more intrusive FCA regime would not only maintain but deepen the existing system of dual regulation in operation in this sector. This is highly undesirable, and would duplicate many costs. It would run counter to the objective of attaining **a proportionate and cost effective regime** and should be avoided.

Conclusion

The operation of a consumer credit reference agency is undoubtedly an activity that presents high risk to individual consumers. That risk manifests not through the potential for them to be financially disadvantaged, but through the opportunity for their personal data rights to be infringed.

Overall responsibility for consumer data protection rests with the ICO. Placing the regulation of CCRAs entirely with the ICO would ensure a joined up approach to consumer protection. It would also avoid the unnecessary costs and potential hazards associated with dual oversight.

We are available to discuss our position in further detail with HM Treasury and BIS as required.

CONSUMER PROTECTION & MARKETS AUTHORITY
[Financial Conduct Authority]

From: **The Car Finance Company (2007) Ltd**

RESPONSE to

A new approach to financial regulation:

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respond to:

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or

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SW1A 2HQ

16 March 2011

Consultation response from *The Car Finance Company(2007) Ltd* on "a new approach to financial regulation: consultation on reforming the consumer credit regime".

The Car Finance Company(2007)Ltd is pleased to submit a response to the recent consultation on "a new approach to financial regulation: consultation on reforming the consumer credit regime." We understand and are concerned that the Governments preferred option is Option 1 which is based on the Financial Services & Markets Act [FSMA] 2000, that could see all companies involved in the credit industry, large and small, operating under FSA styled 'rule' based regulation. Consumer credit has undergone root and branch changes over the last 35 years culminating in the latest piece of regulation, the Consumer Credit Directive implemented in February of this year. We believe that the current regulator of consumer credit, the Office of Fair Trading [OFT] has been provided with the appropriate tools of regulation and enforcement which means that they have more than adequate means of controlling the market, in a proportionate and appropriate way whilst taking action against any 'rogue traders' within the market. The consultation paper proposes the transfer of the OFT to operate under the Financial Conduct Authority, alongside the FSA. We fail to see why a successful model for regulating consumer credit is potentially once again facing further major change thereby creating concerns for the Industry and consumer alike.

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We do not feel that the consultation document, or the impact assessment, presents any compelling evidence to move to a FSMA style regime for businesses currently wholly regulated by the OFT, especially those that are considered to be SMEs. We feel that many unintended consequences could arise as a result of the change. Increased costs and regulation could force some smaller organisations, or sole traders to exit the market.

The provision of consumer credit has risen considerably in recent decades and enabled consumers to access products and services to suit their lifestyles. As a direct result of the negative impact of 'credit crunch', bank funding to the SME sector in particular has been severely curtailed, resulting in a significant downturn in lending. Consumer credit has hugely contributed to the positive growth of the UK economy over the last twenty years, within a highly competitive and innovative market. The cessation of many credit products is currently stifling growth, and further regulation, or even uncertainty about regulation going forward will stifle much needed growth even more.

Used wisely, consumer credit also helps consumers to smooth the peaks and troughs in income and expenditure, and allows consumers to manage their finances in a way that suits them.

Our business falls into the “small to medium sized enterprise“ [SME] category
We finance used cars to sub prime consumers from high street locations and employ 17 people.

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The proposed new regime will be the most radical change in consumer credit regulation for a generation. We believe that the massive changes that consumer credit has gone through in 1974, 2006 and recently with the implementation of the Consumer Credit Directive should not be changed again to fit FSMA 2000. Moreover, we believe that it would create havoc in the consumer credit market, to effect a change from regulation which provides for clear legal certainty to a, principles and rules based approach such as the FSA.

The standards expected by firms in the framework of the UK regulatory regime for consumer credit are some of the highest in Europe and the burden on SMEs in ensuring compliance is a large one. Banks, building societies and large finance houses have larger staffing levels and financial resources to cope with more onerous regulation for deposit takers where the risks are greater. For the SMEs simply keeping up with the required changes is expensive, as detailed regulations can be supplanted by guidance notes and additional actions are required when dealing with other Government agencies.

The changes currently outlined within the consultation paper, would be the most complicated and costly change for all parties. Large numbers of small businesses could be expected to leave the market [over 33% of current credit licensees are sole traders]. Many other lenders would in all probability withdraw from at least part of their current markets. In consequence, the UK’s consumer credit markets would shrink considerably, credit availability would be restricted, and market competition significantly reduced. There would be an increase in the costs of borrowing as companies would have to pass on the higher cost of regulation under the new regime. The effects would almost certainly exceed those of the recent credit crunch, where availability and choice of products reduced dramatically. The low-income borrowers in particular would be most affected, with the real danger of financial exclusion becoming far greater.

As you are no doubt aware around 40% of all consumer lending is currently done by companies which are not banks. Within the body of the consultation paper is the proposal that capital adequacy requirements would be imposed on all lenders, which would impact on organisations that do not take, or use deposits to fund lending. Similarly, much of the current consumer market lending is dependent on intermediaries. Making lenders responsible for the regulatory compliance of intermediaries would have a serious adverse effect on markets such as motor finance.

Our main areas of concern are:

- further unwarranted changes to consumer credit regulation
- the extension of the new regime to small business lending
- a requirement for all existing lenders to re-apply for authorisation for both existing and past business
- significantly higher regulatory fees
- the loss of the certainty of the legal position on loan agreements
- further disruption to business during the handover and changes
- lack of experience on consumer credit in the new Authority
- potential loss of Trading Standards Authority experience

Consumer protection within consumer credit has been strengthened over the years and with the implementation of European Consumer Credit Directive, and the move towards maximum harmonisation consumers are even more protected. The level of complaints dealt with by the regulator, or the Financial Ombudsman Service [FOS] are minute in comparison to number of loan agreements written. Companies are concerned about their reputation, and treat consumers with respect and dignity. The risk lies with the lender not the consumer, as no deposits are taken by the lenders outside of the banks, large finance houses and building societies. We believe that there is no compelling reason to move towards monitoring and reporting as consumers are already well protected.

The Coalition Government are continually stating their declared policy that enterprise and the SMEs are pivotal in the UK economy avoiding the real danger of a double dip recession. The Prime Minister has also stated that bureaucracy and regulatory red tape are the enemies of enterprise and that unnecessary regulation should be avoided at all costs. We believe that the changes that consumer credit has gone through in 1974, 2006 and now the implementation of the Consumer Credit Directive in February 2010 should not be changed yet again to fit FSMA 2000. Moreover, we believe that it would create havoc in the consumer credit market to change from regulation giving clear legal certainty to a, principles and rules based approach.

We believe therefore that Option 2 is the best option and that consumer credit should remain under the current regulatory framework and body, preferably an OFT style that would allow the market to retain the legal certainty of the current regulation with appropriate and proportionate enforcement.

Yours sincerely

Mark Smith
Managing Director

CONSUMER PROTECTION & MARKETS AUTHORITY
[Financial Conduct Authority]

From: **CashCall Finance Limited**

RESPONSE to

A new approach to financial regulation:

consultation on reforming the consumer credit regime

18th March 2011

Consultation response from CashCall Finance Limited on "a new approach to financial regulation: consultation on reforming the consumer credit regime".

CashCall Finance Limited is pleased to submit a response to the recent consultation on "a new approach to financial regulation: consultation on reforming the consumer credit regime." We understand and are concerned that the Governments preferred option is Option 1 which is based on the Financial Services & Markets Act [FSMA] 2000, that could see all companies involved in the credit industry, large and small, operating under FSA styled 'rule' based regulation. Consumer credit has undergone root and branch changes over the last 35 years culminating in the latest piece of regulation, the Consumer Credit Directive implemented in February of this year. We believe that the current regulator of consumer credit, the Office of Fair Trading [OFT] has been provided with the appropriate tools of regulation and enforcement which means that they have more than adequate means of controlling the market, in a proportionate and appropriate way whilst taking action against any 'rogue traders' within the market. The consultation paper proposes the transfer of the OFT to operate under the Financial Conduct Authority, alongside the FSA. We fail to see why a successful model for regulating consumer credit is potentially once again facing further major change thereby creating concerns for the Industry and consumer alike.

The consultation paper goes much further than the transfer, as it proposes to apply to the consumer credit market the FSA's current approach in the retail deposit market. Without a more proportionate approach this is unlikely to work, because of the fundamental difference between credit [where the risk lies with the lender] and banking/saving [where the main risk lies with the depositor]. Needless to say, compliance costs will increase significantly, and supervision will intervene far more under the new regulator.

We do not feel that the consultation document, or the impact assessment, presents any compelling evidence to move to a FSMA style regime for businesses currently wholly regulated by the OFT, especially those that are considered to be SMEs. We feel that many unintended consequences could arise as a result of the change. Increased costs and regulation could force some smaller organisations, or sole traders to exit the market.

The provision of consumer credit has risen considerably in recent decades and enabled consumers to access products and services to suit their lifestyles. As a direct result of the negative impact of 'credit crunch', bank funding to the SME sector in particular has been severely curtailed, resulting in a significant downturn in lending. Consumer credit has hugely contributed to the positive growth of the UK economy over the last twenty years, within a highly competitive and innovative market. The cessation of many credit products is currently stifling growth, and further regulation, or even uncertainty about regulation going forward will stifle much needed growth even more.

Used wisely, consumer credit also helps consumers to smooth the peaks and troughs in income and expenditure, and allows consumers to manage their finances in a way that suits them.

Our business falls into the "small to medium sized enterprise"[SME] category of online micro loans for UK residents (18+), in regular employment, which commenced trading in July 2010 and employs 3 staff.

Statistics published by Business Innovation & Skills [BIS] in October 2010 (http://.stats.bis.gov.uk) show that the SMEs together accounted for 99.9% of all enterprises, 59.8% of private sector employment and 49.0% of private sector turnover. Both the number of companies and the number of sole proprietorships rose, the former for the 11th successive year, the latter for the seventh successive year. Small enterprises alone, with 1 to 49 employees, accounted for 48.2% of employment and 37.5% of turnover. Addressing the consumer credit SMEs, paragraph 3.1 of the consultation paper suggests that just over one-third of OFT licensed firms are sole traders.

The proposed new regime will be the most radical change in consumer credit regulation for a generation. We believe that the massive changes that consumer credit has gone through in 1974, 2006 and recently with the implementation of the Consumer Credit Directive should not be changed again to fit FSMA 2000. Moreover, we believe that it would create havoc in the consumer credit market, to effect a change from regulation which provides for clear legal certainty to a, principles and rules based approach such as the FSA.

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We believe therefore that Option 2 is the best option and that consumer credit should remain under the current regulatory framework and body, preferably an OFT style that would allow the market to retain the legal certainty of the current regulation with appropriate and proportionate enforcement.

Yours sincerely

Peter Adams (Director)

Response March 2011

HM Treasury/ BIS consultation on reforming the consumer credit regime

CBI response

Linda Jackson | Competitive Markets Directorate | CBI
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Any changes in the regulatory structure for consumer credit must take forward the positive aspects of the current regime, which provides certainty and clarity. It needs to be demonstrated that a new structure will be justified in terms of the outcomes and benefits it will deliver for both business and consumers.

KEY MESSAGES

The current regulatory system for consumer credit has worked well for many years and provides clarity and certainty in the market. The CBI is concerned that this will be undermined if there is a move away from the existing statutory based regime, particularly as the benefits for business and consumers from such a change have yet to be demonstrated. Any change to the regulatory structure must draw on the positive aspects of the current regime.

VISION

The government needs to set out its vision for the consumer credit market clearly

The government's vision of the future of the consumer credit market is unclear. The current market is vibrant, diverse and competitive, offering different types of products to a wide range of consumers. There is no evidence that the market is not working at present.

If there were to be a change of regime to a principles based Financial Services and Markets Act approach, this would be a costly upheaval and could well result in a concentration of fewer larger players in the market. This would affect competitiveness, restricting consumer choice and ultimately the level of available credit.

Consumer credit is an important component of the economy and unless the changes support the market and promote consumer choice they are likely to hamper economic growth.

The government needs to set out clearly how it believes the market should develop in future and how the proposed changes will deliver its vision.

IMPACT ASSESSMENT

HM Treasury needs to complete a more thorough and robust cost benefit analysis to support the basis for the proposals

The impact assessment provides very little evidence as to why this move away from the existing regime, which will be costly and cause a significant amount of upheaval in the industry, should take place. A full and robust cost benefit analysis of the options in the consultation paper, including the consumer detriment they are designed to address, must be carried out before a decision is taken about the future direction of regulation.

The paper refers to the benefits for consumers of moving regulation to the Consumer Protection and Markets Authority (now renamed the Financial Conduct Authority (FCA)) but these are not specified. Similarly the paper acknowledges that there will be increased costs for business but does not quantify them, stating only that they must be proportionate and reflect real and justifiable benefits for consumers and the market.

The costs for business are likely to be significant if the regulatory rules and approach are changed, particularly for SMEs, and will be in addition to those which have already resulted from two recent rounds of major reforms. Some of those reforms have only just come into effect and it is too early to assess their impact on businesses and the market. Nevertheless, the cumulative effect of these changes needs to be taken into account, not only in terms of costs, but also disruption to the industry.

The consultation document states that there would be significant benefits for consumers, but the cost benefit analysis should reflect the fact that the bulk of the costs of change will ultimately rest with consumers.

POLICY OBJECTIVES

Proposals need to be clear, simple and proportionate

The CBI supports the policy objectives set out in the consultation paper which will underpin the government's approach in taking forward proposals in this area: clarity, coherence and market oversight; effective and appropriate consumer protection; simplification and deregulation; proportionality and cost effectiveness.

However, the case for change has not yet been made and the main test will be delivering these objectives in practice under a new regime and measuring their success.

EFFECTIVENESS OF THE PROPOSED REGIME

If HM Treasury is to press ahead with its proposals it must do so in a way which carries forward the positive elements of the current regime

A move to a new regime would disrupt the market. It needs to be demonstrated that it would be justified in terms of the outcomes and benefits it would provide for both consumers and business.

- Clarity is a key feature of the current system – and recent court decisions have provided additional certainty. There needs to be safeguards to ensure that a new principles-based system does not undermine that clarity. Where possible, existing legislation should be transferred across into the new regime.
- Any new regulatory regime should be based closely on the current statutory system and should use a light touch approach. This would combine any advantages that arose from the single regulator model with a degree of continuity. But the complexity of developing the new regime should not be underestimated.
- The CBI supports the objectives of simplification and deregulation. Change, however, always involves cost and there is a trade off between certainty and simplification. It is important to be clear where that balance would lie under any new regime to ensure that longer term gains from simplification outweigh the costs of making the changes.
- Self regulation should continue to have a role in any new regime. Industry codes have been helpful in spreading good practice and enhancing the reputation of the sector. Competition among firms is also important in driving up standards and improving consumer outcomes.
- There would be a significant knowledge gap among the regulators if regulation were to move to the new FCA. The experience and expertise built up within the consumer credit team at the OFT would be lost in terms of the operation of the market and regulatory approach unless there was continuity of personnel and approach. The CBI would hope that the OFT consumer credit team would move across to the FCA and would be given responsibility for transferring the new regime.
- Trading standards currently have a significant role in consumer credit enforcement and intelligence gathering at local level to support the OFT. They have a very broad consumer protection remit which may well expand further in the light of the government's consumer landscape review. A new regime and different regulatory approach would pose significant challenges for trading standards which are already under pressure as a result of budgetary cuts. Any proposals should take this into account.
- There would need to be a realistic timescale for the introduction of a new regime to allow businesses sufficient time to plan for the changes. This would be particularly important given the likely scale of those changes and the recent reforms which businesses have already had to assimilate, some of which have only just been brought into effect.
- All existing agreements should be grandfathered into the new system to ensure continuity and certainty. It would raise difficult legal issues as well as imposing significant additional costs if existing agreements or contracts which are rolled over had to be re-authorised under a new regime. Lending firms' licences would also need to be grandfathered into the new regime.
- Other transitional arrangements must be clear to avoid undermining confidence in the market. It is important that as responsibility for regulating consumer credit moves out of the OFT, the interim arrangements are transparent and coherent, including whether it is intended that it would be a gradual process or a "big bang" approach, and that the OFT is appropriately funded until new arrangements are in place.
- It must also be clear at all times where the lines of responsibility lie between BIS, the Treasury, the OFT and the FCA.

ACCOUNTABILITY

The new regime must be accountable and transparent

The consultation paper acknowledges that the new regime should be accountable and transparent in its operation.

Under the current regulatory system policy and legislation are set by a government department and there is full accountability to Parliament through Ministers. In the case of the FCA, there would not be direct accountability to Parliament; accountability would derive from the publication of an annual report.

In addition, currently new legislation is debated by, or at the very least laid before, Parliament so that there is direct scrutiny of the legislative process and an opportunity to debate new legal requirements. Rules made in future under the FCA would be subject to public consultation but not to scrutiny by Parliament.

These represent significant changes and a reduction in accountability and transparency in the regulatory framework. The industry will need to be reassured that future rule changes would reflect the nature of the market and would not undermine the efficiency of the current regime.

The industry is also concerned that there are aspects of the current FSA approach to making rules which would undermine the clarity and efficiency provided by the current consumer credit regime: for instance the retrospective application of new rules and the use of speeches to drive policy. These would cause serious concern to consumer lenders, many of which are small businesses and which would be particularly affected by such FSA processes.

THE FCA

General comments on the role of the FCA

The CBI welcomes the statement in the consultation paper published by HM Treasury on 17 February that the FCA will be an impartial regulator rather than a consumer advocate. We do not see these two roles as compatible.

The CBI also supports the promotion of competition as one of the three operational objectives of the FCA. This will underline its market rather than consumer protection role.

We also believe that the FCA's operations should be subject to the better regulation principles.

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INVESTOR IN PEOPLE

CBI

The CBI helps create and sustain the conditions in
which businesses in the United Kingdom can compete
and prosper for the benefit of all.

We are the premier lobbying organisation for UK business on national and
international issues. We work with the UK government, international
legislators and policymakers to help UK businesses compete effectively.

Our members benefit from our influence, a wealth
of expertise, business services and events.

March 2011

www.cbi.org.uk

RESPONSE
TO THE HM TREASURY & DEPARTMENT FOR BUSINESS, INNOVATION AND SKILLS

A new approach to financial regulation: consultation on reforming the consumer credit regime

DECEMBER 2010

The Consumer Finance Association

The Consumer Finance Association (CFA) is a trade association which represents the interests of businesses offering short term, unsecured personal loans (often referred to as "payday" loans). CFA members are licensed and regulated by the OFT. The Consumer Finance Association represents the larger businesses accounting for around 70% of lending in the UK payday loan market from high street outlets or online. Hundreds of other, usually very small, businesses also offer such loans. This type of loan allows customers to borrow a relatively small amount of money (usually between £50 and £800) which they repay over a short period (typically one or two months). Loans are not designed for longer term borrowing, but to improve short term personal cashflow.

The typical payday loan customer is a young adult or in early middle age, and relatively free of financial commitments such as a mortgage or dependent children. S/he may be averse to running up long term unsecured debt but would rather choose to borrow and repay over a short period to ease personal cashflow when a number of bills arrive at once, or to fund an acquisition or activity. An OFT review showed that 94% of payday loan customers come from a household with at least one full time worker, and that 76% of customers earn £15,000 or more a year.

Consumer Finance Association members:

- *Offer short term loans geared to the borrowing needs of customers*
- *Assess that customers can afford loans, and are able to repay them*
- *Provide clear, transparent customer contracts and communications*
- *Treat customers in a helpful, courteous manner and deliver high standards of service*
- *Maintain high levels of customer satisfaction*

Consumer Finance Association members do not:

- *Target people with debt problems*
- *Lend to people who they believe cannot afford to repay*
- *Deal with customers if there is any question about their identity or authenticity*

Contact Details

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17th March 2011

Consumer Finance Association 46 Brook Street Chester Cheshire CH1 3DZ

OVERVIEW

1. The Consumer Finance Association supports the concept of improving the way consumer credit is regulated with a simpler, more responsive regime that is flexible, proportionate and able to keep up with a fast-paced, innovative market. We are also enthusiastic about enhanced clarity for consumers and businesses, increased confidence in consumer credit regulation with manageable, proportionate, simplified and fewer regulatory burdens on business. These are desirable and worthwhile objectives.

2. The consultation discusses the Government's *intention to bring consumer credit into the same regulatory regime as other retail financial services.* This intention presupposes that all consumer credit operates on the same principles and shares similar systems, processes and procedures. It also presupposes that consumer behaviour is similar whether taking out a 25 year mortgage or a 30 day £100 cash advance. Across the entire spectrum of credit products, reasons to use credit differ widely and therefore a single financial services regulatory regime would, we feel, reduce the effectiveness of unsecured consumer credit regulation. We do not agree that all retail financial services constitute a *market as a whole*. Unsecured consumer credit is a discrete market that stands independent from other financial services, and does not rely upon them. We would also argue that pawnbroking, hire purchase and conditional sale agreements are part of that market, albeit that they are to some extent secured lending rather than unsecured. With **unsecured** consumer credit, the lender takes all the financial risk. This is not the case in any other financial service where financial risk is split between provider and customer (even with insurance, since the cover may not be applicable to the actual event, and excesses are commonly imposed).

3. It is surprising that the Government's preferred option is that the regulatory regime for consumer credit currently operated by the OFT - in which there has been no market failure, no regulatory failure and no government bail-out – should be replaced by FSA style regulation - a regime that has indeed encountered market failure, regulatory failure and significant government bail-outs. The consultation document reads as if the FSA regime has been an unmitigated success which should be a model for the Financial Conduct Authority (FCA), and as if the OFT supervisory regime has failed. We consider the exact reverse to be the case.

4. Consumer credit is much more about the provision of goods and services than financial services as such. This should be recognised since regulating consumer credit as if it were simply another financial service may well lead to detrimental outcomes for consumers. Given the experience of the introduction of new measures *within* the existing regulatory regime brought about by new regulations in 2004, the Consumer Credit Act 2006 and the EU Consumer Credit Directive regulations, we consider that introducing an entirely new regulatory structure would not be achievable in the timeframe desired by the Government. Additionally, 40 years of experience, application and interpretation of the law under the Consumer Credit Act 1978 would be discarded for an untried system. The potential for commercial confusion and significant consumer detriment is very high indeed.

5. It is entirely unclear what the Government vision for the consumer credit market actually is. Consumer credit is a growth engine for the economy. The proposed level of regulation would stifle it. We have a number of concerns about the proposals, particularly lack of clarity and contradictory policy objectives. With the advent of FSA style regulation - in fact: *a tougher, more proactive and more focussed approach to regulating conduct in financial services and markets than has the FSA*, we could not see how the policy objective to *minimise the risk of increased market exit, reduced competition, a restriction in the supply of regulated credit or a higher incidence of unauthorised trading* can possibly be achieved. More than 600 small mortgage and insurance businesses withdrew from the market when the FSA took on mortgage and insurance regulation in 2004/05. We consider that the House of Commons Treasury Committee comments in its Seventh Report of Session 2010–11 reflect the potential detriment that will be caused to the provision of unsecured consumer credit by the Option 1 proposal:

> *It would be possible to have a regulatory system which was so tightly controlled that the risks to the consumer were minimal. However, such a system would be highly costly to the consumer, stifle innovation and would eliminate any individual choice as to the level of risk, and consequently of likely returns, an individual could take. It would have knock-on effects for the wider economy. It would not increase overall welfare*.

6. The Consumer Finance Association considers that **unsecured** consumer credit (together with pawnbroking, hire purchase and conditional sale agreements) should continue to be regulated by the Consumer Credit Act 1974 recently amended by new regulations enacted in 2004, the Consumer Credit Act 2006 and the EU Consumer Credit Directive Regulations. Credit secured on property built on land should be regulated under an FSA style regime as is mostly the case now. The anomalies in the current regime – bank current accounts and overdrafts, credit cards issues and credit secured other than on property build on land, where there are real evidenced problems with the Consumer Credit Act 1974 regulations, should be addressed and resolved separately without subjecting the entire unsecured consumer credit market to unnecessary, costly and confusing upheaval that has yet to be shown to have any benefits for businesses or consumers.

7. The FSA and OFT regulate approximately 29,000 and 96,000 firms respectively, and 16,000 of these are jointly regulated There are a few regulatory inconsistencies for some of the 16,000 jointly supervised bodies. But these do not affect those businesses that are solely regulated by the OFT. It does seem to us that it would be more cost effective, less disruptive and most likely to mitigate a disproportionate impact on smaller firms; minimise the risk of increased market exit, reduced competition, a restriction in the supply of regulated credit or a higher incidence of unauthorised trading; for these inconsistencies to be addressed and reformed rather than to engage in the enormous, unnecessary, expensive upheaval proposed.

8. Of great concern is that the FCA will be subjected to no Parliamentary scrutiny. Simply reporting to the Treasury Select Committee is not sufficient oversight. The FCA could in fact adopt and follow policies that conflict with Government objectives. Additionally, there appears to be no mechanism to ensure that the **intentions** behind the proposals are monitored to ensure that what is delivered is what was intended. Unintended consequences (such as promoting a culture of avoidance and a rise in unregulated lending) have not been satisfactorily addressed.

9. In the preferred Option 1, unsecured consumer credit appears to be being treated as a residual issue. It is unclear whether rule creation will be conducted with the customary evidence based requirements being demonstrated. We believe that this is essential. It is also unclear how the Financial Ombudsman Service and its decisions fit into the proposed FCA structure. We also believe that the FCA Board should have non-executive Directors conversant with all sectors of the unsecured consumer credit market.

10. We are concerned that the proposals in this consultation simply do not accord with a raft of Government policies on regulatory development. The statutory Regulators' Compliance Code requires that Regulators should consider the impact that their regulatory interventions may have on economic progress, including thorough consideration of the costs, effectiveness and perceptions of fairness of regulation. They should only adopt a particular approach if the benefits justify the costs and it entails the minimum burden compatible with achieving their objectives. The five principles of good regulation state that any regulation should be transparent, accountable, proportionate, consistent, and targeted only at cases where action is needed. Better regulation policy includes that regulations should complement, not complicate, the way people work and that there should be a careful assessment of the impact of any new regulations. Finally, the Department for Business, Innovation and Skills *Principles for economic regulation* consultation in January 2011 said that that the government proposes to establish a set of cross-sector Principles for Economic Regulation, which seek to reaffirm the importance of, and the Government's commitment to, stable and predictable regulatory frameworks to facilitate efficient investment and sustainable growth. It is important that the regulatory frameworks avoid adding undue uncertainty to the business environment, and regulatory frameworks should prevent unexpected changes to the rules of the game. This consultation fails to meet these policy objectives.

Our responses to the questions posed in the consultation are as follows:

Chapter 1

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

11. The whole approach of this assessment of the consumer credit market is top-down, rather than looking first from the consumer and provider positions at the end of the regulatory change. This gives a skewed view of the market. What we do not find in this consultation is any detailed analysis of the consumer detriment that will be addressed by the proposed reforms, nor any indication as to how the

success of the policy objectives will be measured. The Impact Assessment is: *An incomplete analysis of impacts other than administrative impacts, for example on the current level of consumer detriment or competition.* With regard to this criticism by the Regulatory Policy Committee, the Government states that: *Estimating the impact on levels of consumer detriment is particularly difficult, given that a large proportion of this impact is likely to be largely preventative, i.e. stopping problems that have not yet developed…* but then also states that: …*it is very hard to measure the current levels of consumer detriment in relation to consumer credit… .* This begs the question that if current levels of consumer detriment cannot be measured, how can it be assessed whether the present regime is failing to address consumer detriment and how the proposed regime will measure any improvement, or indeed exactly how a new regime will *stop problems that have not yet developed* and demonstrate that this has been achieved?

12. The Government's policy objectives are to provide greater clarity, coherence and improved market oversight. There is a desire to ensure consistent treatment of *similar firms and products.* Also a desire to reduce the compliance and administration burdens for firms *currently regulated under different regimes by both the FSA and OFT.* It is very unclear how this would impact on the short term, small sum loan sector represented by the Consumer Finance Association. The Government asserts that the increase in the number of people using payday loans correlates with a rise in the numbers of consumers struggling to repay their debts. There is no evidence provided to support the assertion of this correlation and this is an unfair and unsubstantiated reference.

13. Moreover, the Government's intention to have one regulator deal with all retail financial services through *standard setting, authorisation, supervision* and *enforcement* will be very difficult to achieve consistently and proportionately when the nature of the products and the consumers who use them are so diverse. The danger is that a monolithic regulator will be unable to cope with the diversity of situations with which it is presented, leading to confusion, inconsistency and breakdown of service much as happened at the inception of the Child Support Agency, the National Criminal Intelligence Service and the Criminal Records Bureau. The effect would damage the consumer economy at a time when stability and growth are paramount. A healthy consumer credit market which serves businesses and consumers well is central to economic recovery and growth.

14. Box 1.A details the key differences between the CCA and FSMA regimes:

- **Rule making and enforcement**
  Whilst Parliament is not as aware of market operations as is the OFT, the FCA would not necessarily have a better knowledge. There is no advantage in having a joint rule-maker and enforcer.

- **Supervision of firms**
  The FSA supervisory regime is particularly onerous and places a significant time and management resource burden on firms. As yet, this regime has not performed any more effectively (or even *as effectively*) as the current OFT regime.

- **Business applications**
  The OFT licensing regime is already onerous for smaller firms. Extra criteria and documentation may lead to market exit and reduce economic growth and availability of credit.

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?

15. We do not agree that all retail financial services constitute a *market as a whole*. The FSA appears to agree that consumer credit regulated by the Office of Fair Trading is not a financial service, since the FSA describes itself as: *the sole regulator of the UK financial services industry*. Unsecured consumer credit is a discrete market that stands independent from other financial services, and does not rely upon them. With **unsecured** consumer credit, the lender takes all the financial risk. This is not the case in any other financial service where financial risk is split between provider and customer (even with insurance since the cover may not be applicable to the actual event, and excesses are commonly imposed). And in the unsecured consumer credit market there *is* one organisation, clearly accountable for performance against a clear set of statutory objectives – the OFT enforcing the Consumer Credit Act 1974.

16. Whilst we accept that it is necessary for one regulator to take a strategic view of priorities across the retail financial services sector, because consumer credit is so distinct and an entity entirely on its own, it seems that little benefit, and no additional consumer protection would be achieved, by including it. There is no *divergence of protection* for personal or small business consumers with the current system – users of consumer credit are no less protected than users of insurance products, mortgages or investments. And it is very unclear how a comparison could be made in any case. The question is whether users of unsecured consumer credit products (together with pawnbroking, hire purchase and conditional sale agreements) are **sufficiently** protected. We would argue that the longstanding success of the Consumer Credit Act 1974 and the enhancements brought about by the new regulations enacted in 2004, the Consumer Credit Act 2006 and the EU Consumer Credit Directive regulations leave consumers inordinately well protected. Indeed, if there were still outstanding consumer detriment to be dealt with, that would be admission of systematic regulatory failure since the announcement of the review of the Consumer Credit Act 1974 in 2001. There is no evidence that we are aware of to support such a view.

17. We do not accept that the *separation of consumer credit and other retail financial services can be incongruous and confusing for firms and consumers.* Indeed, we would argue that the opposite is in fact the case. Consumers are familiar with the unsecured consumer credit system and confident in its operation. The confusion for businesses has been entirely due to the new regulatory requirements brought in by the new regulations enacted in 2004, the Consumer Credit Act 2006 and then, hot on its heels, the EU Consumer Credit Directive regulations, not the regulatory **system** as such. A further change in regulation so soon will add enormously to that confusion. The pace and change of regulation is not only confusing to the consumer, but places additional burdens on the industry in terms of cost of change

and, more importantly, training staff to ensure the risk of consumer detriment is minimised.

18. The consumer credit licensing system was thoroughly overhauled by the Consumer Credit Act 2006 and came into operation in April 2008. It is far too early to assert that the licensing system has not worked to protect consumers from abuse – and indeed the consultation paper offers no evidence of this. The system was reformed in order to reduce the risk of consumer detriment. If, after such a short period it is asserted that it has not worked, it would again be indicative of regulatory failure. One has to ask whether, if there has been so much regulatory failure despite all the effort and consultation put into recent reforms, what confidence there could be that yet further changes would be successful? Without some definition and quantification of consumer detriment yet to be remedied, we cannot see the purpose of further upheaval.

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;

19. Clearly the main risk faced by consumers in consumer credit markets is overindebtedness. Concerns about consumer overindebtedness have been a driver for reform for the last ten years. But the risk of reduced access to a wide choice of credit products is also significantly detrimental to consumers. It will move overindebtedness into non credit areas such as utility bills and taxes, and may encourage consumers to seek credit from unregulated or unlicensed lenders.

20. A BBC *Panorama* programme transmitted on 7th March 2011 highlighted the very high profits being made by organised criminals from the sale of contraband cigarettes and tobacco in the cash economy. One significant impact that should be considered is the alternative sources of supply for consumer credit if the regulated supply (particularly of small sum short term loans) is reduced by regulatory process or action. It has been reported that one in five cigarettes smoked in this country are smuggled in, as is 80% of all hand rolling tobacco. This is a long term, ongoing issue and, as the *Panorama* programme indicates, has not been combated successfully. On 13th February 2002 *The Daily Mail* reported £3.5 billion of lost revenue because of this, and on 20th July 2001 *The Independent* reported £620 million in excise duty lost to fraud by selling bonded alcohol due for export inside the UK. In July 2003, 15 men were prosecuted for evading £84 million duty in this way. The prosecution failed.

21. There is clearly a large amount of cash associated with contraband alcohol and tobacco. There is an existing distribution infrastructure. There is a low chance of prosecution since most resources are targeted against drug dealing. Consequently there is a robust (albeit illegal) business model for cash loans to customers of contraband alcohol and tobacco and consumers who favour the cash economy generally. This is not the common perception of illegal lending, preying on the poorest and most vulnerable in society and enforced by violence (which is being combated by current Government initiatives) but a quiet and vibrant, under the radar business that does not attract complaint or much investigation. It may well be

the most successful competition for the legal small sum, short term loan market, and may become the *only* source of supply if there are further restrictions in the regulated market.

22. The size and scope of the informal and illegal market deserves at least some proper research both to inform policy makers and to place it in context with this consultation. We suggest that HM Treasury seek information from HMRC, the UK drinks industry and the UK tobacco industry to produce a realistic estimate of the level of funding available to fill a consumer credit vacuum if regulated credit were to become less available to the lower middle income sector of society.

23. The Ministerial Consumer Finance Forum meetings in the first half of 2009 had objectives that included monitoring developments in unsecured credit markets and personal debt through the downturn, responding to emerging issues facing borrowers in the downturn and driving up standards in dealing with borrowers in difficulty. The emphasis was on current and future indebtedness problems. There seems to be a consistent view that tightening lending criteria (in a market where such criteria have already tightened considerably as a result of market forces) will somehow prevent further consumer indebtedness. This is a fallacious axiom. Reducing significantly consumer access to unsecured credit will *increase* debt in non credit areas such as utility bills, council tax, income tax and N.I. payments (particularly by the self employed) if credit is not available to smooth out the peaks and troughs of income and expenditure for any who have anything other than perfect credit histories. Interestingly, market research sponsored by left wing lobby group Compass in December 2010 reported that in its sample of social housing tenants: *a significant minority say that they would be in debt if they could only access credit. Rather, they are in rent arrears to their social landlord.* Yet more consumers than ever have impaired credit histories *because* of the economic downturn. Their need for access to appropriate credit products may well be the greatest.

24. Indebtedness issues cannot be prevented or significantly reduced by regulation. In response to concerns about the level of consumer borrowing, the then Minister for Consumer Affairs set up a Task Force in late 2000 to look at ways of achieving more responsible lending and borrowing. The Task Force recommended that a survey should be undertaken to provide the information it lacked on the causes, extent and effect of overindebtedness. *Over-indebtedness in Britain: A report to the Department of Trade and Industry* by Elaine Kempson of the Personal Finance Research Centre was published in September 2002. Even during a period of strong economic growth only a small minority of consumers were heavy credit users and the majority of the population managed their credit facilities successfully. As the Minister at the time, Melanie Johnson MP, said: *Today, credit is a tool. It is an enabler – one that is largely used sensibly. We can conclude from this that the majority of credit users have manageable debt.*

25. Those who had indebtedness difficulties were overwhelmingly those who had been made redundant, had contracted a long term illness, who had suffered family breakdown or some other event (even sometimes having a baby) that had disrupted a reliable income stream. Those causes of overindebtedness have not

changed in the current economic downturn, it is simply that the same causes affect more people.

26. Despite this evidence, the received wisdom appears to be that taking regulatory action to reduce access to credit, particularly non mainstream credit products, will improve matters. Many consumers who might be regarded as *risky* because they have had some repayment difficulties will be the very ones who will need available credit. Interestingly, *The Times* reported on 19th May 2009 that the Bank of England had made almost £1bn profit in fee earning activity, five times greater than in the previous year, as a direct result of its interventions to shore up Britain's banking system. In effect, the Bank of England gave credit to banks which would otherwise have foundered. It lent money to extremely risky and vulnerable institutions at high rates, and the results were both praised by Government and purported to be the results of prudent Government policy. The same principle applies to consumers in financial difficulty. Those in the worst situations are being helped by Money Advice processes, IVAs and bankruptcy where necessary. But a great many consumers (we believe as many as 1 in 4) do not have difficulties requiring such assistance, they simply need to be able to smooth out their income and expenditure. A regulatory system that dissuades lenders from offering appropriate credit does those consumers a great disservice.

27. OCR Macro research for DG SANCO led to an EU Overindebtedness Study published in October 2001. This concluded that whilst: *A person is over-indebted if he or she considers that he or she has difficulties in repaying debts, whether consumer debt or a mortgage* in fact: *being indebted … is normal consumer behaviour*. It supported the UK research: *Negative shocks or surprises are a major factor behind over-indebtedness*; and demonstrated that there is no clear evidence of increasing availability of consumer loans raising the percentage of over-indebted households. Low income cannot be used as evidence that debt problems exist. The existence of debt does not directly imply debt problems. In Denmark, Finland, France, Luxembourg and the UK where consumer lending was extensive, there was a relatively low level of over-indebtedness. In Austria, Germany, Greece, Spain, Italy and Portugal where consumer borrowing was low, there was a high proportion of over-indebted households. Only the Irish (high) and the Belgians (low) did not conform to this pattern.

- key provisions for consumer protection under the current regime and their effectiveness in securing appropriate outcomes for consumers;

28. Enhancements to consumer credit regulation brought about by new regulations enacted in 2004, the Consumer Credit Act 2006 and the EU Consumer Credit Directive regulations, together with a raft of OFT regulatory guidance, ensures that credit advertising is not misleading and that consumers get essential information before engaging in a contract. The implementation of the Consumer Credit Directive and associated marketing regulations has greatly added to increased transparency, allowing consumers to make informed choices.

29. Creditors are required to assess the borrower's creditworthiness before granting credit or significantly increasing the amount of credit. The borrower can withdraw from an agreement within 14 days following conclusion of the agreement and

must be notified of changes in the rate of interest payable under the agreement. This must generally be done in writing before the change takes effect.

30. There is a right to settle a credit agreement early and make partial early settlements at any time. The borrower can terminate an open-ended agreement at any time, subject to notice not exceeding one month. The creditor must give at least two months' notice of termination, and the notice must give objectively justified reasons for termination.

31. The borrower must be informed if the debt is sold or transferred to a third party, unless the arrangements for servicing the debt are unchanged.

32. Credit intermediaries must disclose the extent to which they are acting independently or work exclusively with one or more creditors. If a fee is payable by the borrower to the credit intermediary for his services, this must be agreed in writing with the borrower before the credit agreement is entered into. The fee must be notified to the creditor if the creditor is calculating the APR.

33. If an application for credit is declined on the basis of information from a Credit Reference Agency (CRA), the creditor must notify the borrower of this and provide contact details for the CRA.

34. These requirements are detailed and comprehensive. There is no evidence known to the CFA to suggest that there is any failure in the regulations to indicate a lack of protection for consumers. Indeed, regulatory and supervisory review by the OFT (and the FSA) as detailed in their reports and actions taken do not indicate any significant failures in current regulations designed to protect consumers. Indeed they are being shown to be most effective.

- the incidence of regulatory duplications or burdens on firms and/or inconsistent regulation of similar types of business.

35. It is clear that some businesses are regulated both by the FSA and OFT. But the product range that causes this duplication is now quite small – primarily concerning credit cards, bank current accounts and overdrafts. The fact that one business offering consumer credit and general insurance is regulated by the OFT for the one and the FSA for the other is not a great concern. Businesses are regulated by the Information Commissioner for the way in which they process customer data – so there is always the situation where a number of regulators supervise aspects of a single business' activities.

36. It seems to us that the enormous change and upheaval of moving consumer credit into an FSA style regime is unnecessary. Seeking solutions to the bank current account and overdrafts and credit card anomalies could provide a simpler, more cost effective and less burdensome result.

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

37. The key objectives that the Government is aiming to achieve through these proposals are clarity, coherence and improved market oversight; effective and appropriate consumer protection, including through a responsive and flexible framework; opportunities for simplification and deregulation; and a proportionate and cost effective regime. The Consumer Finance Association supports the concept of improving the way consumer credit is regulated with a simpler, more responsive regime that is flexible, proportionate and able to keep up with a fast-paced, innovative market. We are also enthusiastic about enhanced clarity for consumers and businesses, increased confidence in consumer credit regulation with manageable, proportionate, simplified and fewer regulatory burdens on business. These are desirable and worthwhile objectives.

38. We believe that the challenge will be to introduce reforms that indeed do mitigate a disproportionate impact on smaller firms, and minimise the risk of increased market exit, reduced competition, a restriction in the supply of regulated credit or a higher incidence of unauthorised trading. We are therefore immediately concerned by the opinion of the Regulatory Policy Committee that the proposals have:

   a. An incomplete analysis of the administrative burdens associated with the introduction of a FSMA-style regime;
   b. An incomplete analysis of impacts other than administrative impacts, for example on the current level of consumer detriment or competition;
   c. An incomplete analysis of the current regulatory framework for consumer credit.

39. We have a number of concerns about the proposals, particularly lack of clarity and contradictory policy objectives. With the advent of FSA style regulation - in fact: *a tougher, more proactive and more focussed approach to regulating conduct in financial services and markets than has the FSA*, we could not see how the policy objective to *minimise the risk of increased market exit, reduced competition, a restriction in the supply of regulated credit or a higher incidence of unauthorised trading* can possibly be achieved. More than 600 small mortgage and insurance businesses withdrew from the market when the FSA took on mortgage and insurance regulation in 2004/05. Yet, in his speech to the British Bankers' Association on 6th March 2011, the Minister (Mark Hoban MP) asserted that: *we want the FCA to play a far stronger role promoting competition*. We cannot envisage how the proposed regulatory structure can successfully implement this policy objective for the unsecured consumer credit market. The closure of smaller business will undeniably lead to reduced choice and competition.

40. These areas of concern are not addressed within the Impact Assessment. The Government concedes that because the FCA would determine the detail of an FSMA style regime for consumer credit, it is not possible to provide detailed quantification of the administrative burdens associated with the introduction of the regime at this stage. But the Government attempts to do so by maintaining that

instead it has provided comparative data on other regulatory changes, as well as independent assessments of the current burdens under the FSMA to give a best estimate of the likely impacts. However, the *comparative data* are those of an analysis conducted by the FSA for the establishment of a statutory regime for first-charge mortgage lenders and insurance intermediaries, so less than relevant for unsecured consumer credit. Indeed, the Government does say that this comparison is *not without its flaws*.

41. The Impact Assessment lists the *significant differences* in the two markets and notes that *the data for this analysis was gathered in 2002 and could therefore be significantly out-of-date.* Nevertheless: *Notwithstanding such potential drawbacks, in the absence of better comparators we believe that this provides a useful indicator of potential costs*. This appears to us to be wishful thinking rather than evidence based analysis.

42. The cost of increasing the number of supervised businesses from 16,000 to between 37,000 and 96,000 (the FSA and OFT regulate approximately 29,000 and 99,000 firms respectively, and 16,000 of these are jointly regulated according to the *A new approach to financial regulation: judgement, focus and stability* consultation paper published in July 2010, although the Office of Fair Trading regulates 96,000 firms according to this current consultation) will be enormous – with no clear cost benefit analysis. The Government cannot estimate the compliance burdens imposed on firms: *Trying to estimate what proportion of the above 37,000-64,000 firms may seek some form of authorisation from the FCA is therefore very difficult, if not impossible ... We cannot say what the net effect of the overall compliance burden placed on firms is likely to be* **...** *Scope for deregulation is constrained by a number of important factors…* .

43. Furthermore, the Impact Assessment claims that *…it is difficult to assess whether compliance under a FSMA-style regime would be more or less burdensome than under the current CCA-style regime.* So where is the benefit? The predominant reference to a *benefit* is described as *... potential improvements in consumer protection for credit users under a new regulatory regime … could lead to beneficial effects on some protected groups*. Yet it is not determined what these *beneficial effects* are, the evidence for them or ways to measure them. On the contrary, it is said that: *In addition, a further risk is that firms may pass on increased costs to consumers in the form of higher prices. If these consumers are low-income or vulnerable, they may be least able to afford any increase in price. Further evidence is required to fully assess the impact of this option on SMEs (both consumer credit firms and businesses that access working capital from unsecured lenders) and consider ways in which costs to SMEs could be minimised.*

44. Whilst: *There may also be benefits accruing to consumers from increased confidence in dealing with regulated firms, which may then help to drive competition in the consumer credit and ancillary markets*, this is confusing because consumer credit is already regulated by the OFT and consumers and small businesses are familiar with the system and confident in its operation. There is no evidence offered that the regulatory changes envisaged would produce **greater** consumer confidence.

45. The Government also acknowledges that the Impact Assessment *does not currently provide a robust analysis on the effects on competition* in the consumer credit market. However: *we have provided a qualitative analysis in Annex 2 of the impact assessment… .* Indeed, at Annex 2 it is stated that moving the regulation and enforcement of consumer credit to an FSMA-style regime may have a significant adverse effect on competition by way of indirectly limiting both the number and range of suppliers. This could well reduce the range of credit and credit-related services offered by both lenders and non-lenders.

46. The Government estimates that professional and financial services have a total sector size of 56,500. 16,000 firms are dual regulated, so up to 40,500 businesses may exit the market because of the compliance costs, administrative burdens and detrimental effect on competition that transferring to a new FCA regime would create. This, it seems to us, directly undermines the policy objectives of *manageable, proportionate, simplified and fewer regulatory burdens on business* and to *minimise the risk of increased market exit, reduced competition, a restriction in the supply of regulated credit or a higher incidence of unauthorised trading*.

47. The Government acknowledges that if there is a high fixed component in the costs associated with regulation under a FSMA-style regime, then these could fall more disproportionately on smaller firms. As such firms may be more likely to serve non standard customers (the size of this market segment is in the region of 12 million consumers), if the burden of these costs leads to market exit this would reduce (or even remove entirely) the range of credit and credit-related products available to these customers. A particular risk associated with this outcome is that if credit supply to these individuals is reduced, they may be more likely to borrow from informal sources or illegal lenders, which could have significant adverse social and financial consequences*: if a significant number of firms choose to exit the market, this may result in a substantial reduction in competition with potentially adverse effects on consumer choice, innovation and incidence of illegal trading*.

48. The Government suggests that this proposal should not impose any additional requirements that might impact disproportionately on small firms already regulated by the FSA. But most of the potential impacts, including a significant fee increases, will be on those firms that are **not** already regulated by the FSA (i.e. OFT licence holders only) that seek authorisation from the FCA: *it cannot necessarily be assumed that smaller firms will be subject to a lower burden of compliance and/or authorisation fees. In extreme cases, if such increases are particularly significant, this may ultimately lead to market exit*.

49. In December 2003, the then Government published *Fair, Clear and Competitive - The Consumer Credit Market in the 21st Century* with proposals to update consumer credit legislation. To produce:

> *A competitive and efficient financial sector, of which the consumer credit market is an important part, is essential to raise the level of economic growth in the UK economy. Our vision is to create an efficient, fair and free market where consumers are empowered to make fully informed decisions and lenders are able to compete on a fair and even basis.*

50. These policy objectives appear to differ little in spirit to those in the current consultation. The December 2003 proposals led to significant regulatory changes with new regulations enacted in 2004 and in the Consumer Credit Act 2006, some of which have only recently been fully implemented. In addition, adoption of the maximum harmonisation EU Consumer Credit Directive by the UK has resulted in further changes being fully implemented by 1st February 2011. It is hard to determine what regulatory problems remain, particularly from the consumer perspective. If there is still significant consumer detriment in the market, that would be indicative of consistent and on-going regulatory failure. Yet none is identified in the current consultation.

51. What the consultation does point out is that there are a few regulatory inconsistencies for some of the 16,000 FSA regulated bodies. But these do not affect those 80,000 businesses that are solely regulated by the OFT. It does seem to us that it would be more cost effective, less disruptive and most likely to mitigate a disproportionate impact on smaller firms; minimise the risk of increased market exit, reduced competition, a restriction in the supply of regulated credit or a higher incidence of unauthorised trading; for these inconsistencies to be addressed and reformed rather than to engage in the enormous, unnecessary, expensive upheaval proposed.

Chapter 2

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.

52. 16,000 firms are authorised or licensed under both the Financial Services and Markets Act and the Consumer Credit Act, amongst a sector size of 56,500 (according to the Impact Assessment, yet the OFT licences 96,000 firms, so there is some confusion about the actual sector size). The Government frequently cites these 16,000 firms as a strong reason to support Option 1 because these dual-regulated firms incur duplication of compliance costs and a degree of inconsistency. Yet is this enough reason to change the entire system (over three quarters of firms) for the benefit of around 22% of firms? Most of these dual regulated firms are larger, well resourced, businesses and consumer credit may not be their main business. Our view is that the anomalies could be addressed without a major upheaval of the entire current regime. Indeed the Government acknowledges that: *Even though some firms that are currently dual-regulated* (e.g. banks and large finance houses) *may favour a single regulator for administrative convenience, for many firms there would be* ***no direct benefit*** *in terms of greater coherence as they already only deal with one regulator* (i.e. the OFT).

53. In the Impact Assessment the Government supports its preference for Option 1 by assuming that there **should** also be a reduction in the compliance costs for businesses that are currently subject to dual regulation. Yet there are only 16,000 firms that this would apply to. All the other firms will have to switch, with massive resource burdens and probable significant market exit. Those already regulated by the FSA are mostly larger organisations that can absorb the additional costs. The FSA budget for mainstream regulatory activity in 2000/01 was £162.5 million.

Ten years later, the broadly corresponding figure had more than trebled to £490.9 million. RPI increased by just over 31% in the same period. It could not realistically be maintained that the increase in budget was matched by the organisation's effectiveness. Ten years ago, a senior FSA executive estimated that for every pound spent by the Regulator, the financial services industry spent £4 on compliance. With the FSA budget at £200 million, that gave an overall regulatory burden of £1 billion a year. If the same ratio is applied today, it gives an annual cost to business of £2.5 billion. This could only rise substantially if Option 1 is taken forward.

54. The Bank of England appears to think that the running costs of FSA systems are too high: *the Bank is also clear that in order to contain costs in the long run it would not wish to share in the existing IT systems at the FSA, which have relatively high running costs.* Also FSA IT systems do not appear to be very efficient. The Bank of England reports: *the FSA has indicated that much of its IT regulatory estate would be in need of amendment or replacement even in the absence of the changes envisaged by the Government's proposals.* There are major costs here not considered in this consultation if current Office of Fair Trading licensing (the PROMOD system has only recently been upgraded) and compliance systems are scrapped and have to be reinvented within (as appears essential) an entirely new FCA IT structure. Experience suggests that the chances of such a new IT structure working well initially, and being delivered on time and on budget are extremely low.

55. It is maintained that the current OFT regulatory regime is too slow to respond to the fast pace at which the UK credit market has developed. However the recent significant overhaul of the Consumer Credit Act and implementation of the EU Consumer Credit Directive have created major regulatory improvements. The Government supports its preference for Option 1 by stating that the FSMA model would be more flexible and responsive and *allow for more flexible approaches to informing consumers.* Yet none of the Consumer Credit Directive maximum harmonisation requirements (including customer information requirements) could be repealed or changed.

56. Some consumer organisations are critical of the current regulatory arrangements. For example, in a recent submission to the Department for Business, Innovation and Skills, Citizens Advice stated that the current system for regulating consumer credit cannot adequately protect all consumers and is, in their view, under-resourced, too slow to respond to problems in the market and too reactive. Yet in recent months the OFT has taken action against numerous businesses including one of the UK's largest debt recovery firms, imposed requirements on MBNA and other similar firms and has recently revoked the licences of 35 debt management companies. These are not actions taken by a body that is slow to respond, averse to proactive action and under-resourced.

57. There is likely to be a range of costs associated with Option 1, both one-off (e.g. familiarisation costs, one-off compliance costs, reorganisation costs) and ongoing (e.g. increased costs of FCA authorisation, monitoring and enforcement paid through FCA fees; costs of prudential requirements). Almost all of these costs will be borne by consumer credit firms, either directly (e.g. through staff training for

new rules or completing regulatory returns) or indirectly (e.g. costs recovered through higher regulatory fees). However, the nature and scale of these costs will depend on the supervisory relationship with the FCA which could be very detailed and intrusive even for some very small businesses.

58. For those OFT licensed firms who are not already authorised by the FSA, the changes (and hence associated costs) are likely to be more significant. It is estimated (in the Impact Assessment) that there are currently 40,000-70,000 such firms, and it is asserted that a proportion of these are either no longer active or may not wish to renew their consumer credit licence – but without any supporting evidence. It appears to be tacitly accepted that a large number of businesses will be driven out of the market resulting in less competition, reduced consumer product choice and consolidation of the market so that unsecured consumer loans, pawnbroking, hire purchase and conditional sale credit are only offered by large institutions which may lack the levels of consumer service currently offered by smaller, and often local, credit providers.

59. The Government is not able to quantify costs for creating FSMA style rules for consumer credit. It is also acknowledged that: *These firms would also be subject to changes in regulatory requirements in relation to their consumer credit-related activities* (following the repeal of the Consumer Credit Act and re-writing of rules) *that may lead to additional costs being imposed on them…*(but)*…it has not been possible to quantify these costs at this stage.* It does appear that because the industry will have to bear all the costs, however large they are, that the Government is not concerned by its lack of evidence as to what they might be. All existing loan paperwork and IT systems will have to be changed if the Consumer Credit Act is repealed and an FCA rulebook is imposed. What the consultation fails to consider is that **all** these costs will finally be borne by customers, who will experience little or no benefit for the increased costs of their credit products.

60. The Government states that: *Although it is estimated that there are currently 40,000-70,000 OFT-licensed firms that are not regulated in any way by the FSA, the actual number seeking authorisation from the FCA could be significantly lower. For example, it is likely that – based on experience over the last couple of years* (but no evidence is actually produced) *the overall total of OFT-licensed firms will decline through natural wastage. Based on an extrapolation of recent trends in churn of consumer credit firms, the OFT estimate that this may be around 8%, which would* imply *a reduction in those potentially seeking authorisation to 37,000-64,000.* It is assumed that around 8% of firms currently licensed by the OFT will choose not to renew their licence due to external circumstances independent of the potential changes proposed. Depending on how changes in these external circumstances (e.g. macroeconomic conditions) have affected different firms: *this assumption may prove to be a substantial under or overestimate.* So the estimate is worthless, but suggests a level of market exit **before** the Option 1 proposals are implemented.

61. Consequently the overall level of market exit may well be very high indeed, particularly as a result of the costs of the proposed changes. A reduction in the number of firms offering unsecured consumer credit, pawnbroking, hire purchase and conditional sale agreements will lead to a decrease in the choice of credit services and products available, which will impact adversely on consumers. It will

reduce the borrowing options for consumers who may be most in need of credit to manage their finances particularly those who rely on overtime or bonuses; the self-employed (13.2% of the employed population) and the retired and unemployed (7.75% of the economically active population). Many such individuals rely on access to credit to smooth the peaks and troughs of income and expenditure, to meet a need, fulfil a desire or take advantage of an opportunity. Reducing the supply and consumer access to unsecured credit will **increase** debt in non-credit areas such as utility bills, council tax, income tax and N.I. payments (particularly by the self-employed). They may also seek credit from other informal or illegal sources, the market for which will be **promoted** by the proposed changes to supervision of the legal supply.

62. Risk is an essential element of lending. Different loan products have different risk profiles, as do particular customer segments. If lenders are constrained in constructing their risk profiles, the results will be a lack of product diversity; lack of access to suitable credit products for any consumer who has a higher than normal risk profile (and the self-employed will be particularly penalised in this respect) and a reduction in competition since the incentive to develop new products is stifled.

63. One-off costs associated with authorisation and ongoing compliance costs may prove particularly burdensome for smaller firms and other lenders, who may be more likely to serve customers towards the high-risk end of the credit spectrum. This could also impact negatively on consumers through an increase in unlicensed trading, particularly through online channels.

64. Application fees will vary according to the complexity of the application – £1,500 for *straightforward* applications; £5,000 for *moderately complex* applications, and £25,000 for *complex* applications. These fees are all much higher than currently required by the OFT. Currently, the maximum fee for an OFT consumer credit licence is £820 for a 5-year period (£330 for sole traders). Current FSA fees are based on turnover as a key factor. Small sum short term lenders will have a disproportionately high turnover, impacting their likely fees, but the risk in the event of their failure to the financial stability of the marketplace must be considered low. An FCA fees structure may not therefore be truly proportionate.

65. Quantifying the one-off costs associated with systems changes to achieve compliance is another significant issue for businesses. Proposed regulatory changes are likely to entail substantial IT implementation costs. PWC estimated that the average cost for implementing the Consumer Credit Act 2006 was £6m-£9m for a large lender. The research also estimated one-off business change costs, which included training and communications. As lenders suggested that such costs would be roughly equivalent to those for IT implementation, these were also estimated to be £6m-9m for a large lender. This would imply a total one-off cost for a large lender of £12–£18m. But smaller lenders will not necessarily have *pro rata* lower costs and could well be priced out of the market just because of the regulatory changes and the need for expensive external legal advice. Neither businesses nor consumers would benefit.

66. Currently, the costs of administering the OFT consumer credit licence regime are £9m-£10m per year. The FSA Annual Funding Requirement for 2011/12 is £500.5 million, a gross increase of 10.1% over the £454.7 million required for 2010/11. However, this is not indicative of the potential costs under the FCA as the legislative basis for enforcement by the OFT is entirely different. The regulatory framework under a FSMA-style regime, and hence the compliance requirements placed on regulated firms, are likely to be substantially greater. We do not see how there is a realistic cost-benefit to such disparity in funding levels between the existing regime and that proposed.

67. There will also be ongoing business costs associated with training and competence (requiring greater HR resources), monitoring (with internal and external audit requirements), additional disclosure requirements (provision of information to consumers) and reporting requirements (provision of information to the FCA). These will depend on the risk posed by the regulated activity, which is not even assessed at this stage. Previous analysis commissioned by the FSA estimated the administrative burden associated with FSMA compliance to be around £600m per year across all regulated firms, while provision of information to third parties (e.g. consumers) under FSMA were estimated to total £255m per year across all regulated firms. This is hugely in excess of the costs of OFT supervision.

68. The Government notes that there are no cost savings. The net impact of repealing consumer credit legislation is £120m per year, yet *there are likely to be additional compliance requirements introduced by the FCA.* It does seem to us that the proposals in Option 1 are therefore both immensely costly and entirely unnecessary.

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

69. A future regime that would allow other bodies or persons to perform the functions of the Trading Standards Services, Illegal Money Lending Teams or other enforcement is misguided. These are very specialist roles that require focused, hands-on relationship management and also legacy knowledge and expertise. There have been significant problems with commercial enforcement of consumer credit and debt management. Businesses that could cause similar problems would be promoted and enhanced by such a move.

Q7. The Government welcomes views on factors the Government or the FCA 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.

70. There is a strong argument that the Consumer Credit Act 1974 as amended by the new regulations enacted in 2004, the Consumer Credit Act 2006 and the EU Consumer Credit Directive Regulations is the most appropriate and demonstrably successful way to regulate consumer credit. The Government has committed itself not to gold plate EU legislation and will simply copy out the requirements. The EU Consumer Credit Directive has just been incorporated in the Consumer Credit Act 1974. If that legislation is repealed, as is planned, then the FCA Rule Book would not be able to enhance any of the maximum harmonisation requirements in the

Consumer Credit Directive, including not regulating at all loans of less than €200. This would immediately remove many of the requirements of the current Consumer Credit Act 1974, and the OFT regulatory guidance based upon it – since that of itself currently gold-plates many of the Consumer Credit Directive requirements. This may well result in significant reduction in consumer protection as compared with the current regime.

71. The Government is aware of the Consumer Finance Association view that a shift to another regulator, even though well-intentioned, could stifle and depress the unsecured consumer credit market. It is argued that the discrete characteristics of the unsecured lending market – lower consumer risk, specific Directives within European law, separate and well-established UK legislation and its own risk flow (with funds moving away from the supplier, in contrast to investment and insurance) – justify a distinct approach. Our view is supported by the Impact Assessment which states that: *A change in regulator, particularly one with limited experience of a wide and highly complex sector, could potentially be counterproductive in terms of uncertainty and upheaval.*

72. The Government asserts that there are benefits to business and consumers from improved oversight and that bringing consumer credit within the remit of the FCA should have an advantage in addressing cross-sector issues. But given that unsecured consumer credit is such a discrete market, with risk only taken by the lender not the borrower, it is unclear how there would be **any** cross-sector oversight benefits. There could only be more efficiency and effectiveness if all forms of consumer credit were similar – which they are not. There is no evidence that improvements in oversight and increased supervisory resource allocated to consumer credit related firms would help to reduce the incidence of problem debt, since most problem debt results from changes to consumers' circumstances. Reducing the supply of unsecured consumer credit, pawnbroking, hire purchase and conditional sale agreements would have no greater effect on consumer debt than would banning overweight people from supermarkets reduce obesity.

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 costs and benefits of considering extending FSMA-style conduct of business rules to a wider group of SMEs.

73. Consumer Finance Association members do not lend to SMEs and in consequence it has no input to offer in relation to this question.

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.

74. Chapter 2 of the consultation document commences with a statement that: *the Government wants to address a number of weaknesses in the current system of consumer credit regulation and create a more effective, proportionate and responsive regime.* Whilst we see some inconsistencies in the current regime, we

do not find any evidence in the consultation document of regulatory weaknesses in the current system. The Financial Services and Markets Act 2000 (FSMA) gives the FSA five statutory objectives, including *securing the appropriate degree of protection for consumers*. Yet nowhere in the body of the Impact Assessment is it considered or analysed whether there is or is not **currently** an appropriate degree of protection for customers. Instead, Option 1 is based on the quicksand of Rumsfeldian *future unknown* considerations: *There are known knowns. These are things we know that we know. There are known unknowns. That is to say, there are things that we know we don't know. But there are also unknown unknowns. There are things we don't know we don't know (Donald Rumsfeld, former US Defense Secretary)*. Likewise it is not considered whether the fact that the OFT does not have any formal rule-making powers under the Consumer Credit Act is a problem for firms or consumers, given that the OFT can, and does, issue regulatory guidance which has the force of rules. There is no consideration as to whether firms think OFT guidance is effective and how far it operates as a rule-book in practice. Only one reference is made to this in relation to claims made by Citizen's Advice – although it is acknowledged that evidence put forward by Citizens Advice should be considered with caution.

75. *We see a real opportunity to improve the way consumer credit is regulated and to create a simpler, more responsive regime.* Because credit products and services are so diverse, creating a supposedly simpler regime will inevitably lead to unintended consequences. For example, the demise of certain forms of short-term credit will have the consequence of reduced choice and access for consumers. A single regulator will also lead to unfair and disproportionate fees, an additional regulatory burden which could prove too onerous for smaller firms that will be caught up in the simpler regime which may work for larger firms, but not small ones. For example, the move to a new authorisation regime may put many consumer credit firms out of business, reducing access and choice for consumers. The proposed regime will create a lack of certainty for business. System changes, new procedures and product changes could stifle innovation as firms are afraid to take risks in case the rules are changed or amended in the future.

76. *The Government wants to enhance clarity for consumers and businesses and increase confidence in consumer credit regulation.* Clarity for consumers has been significantly enhanced by the EU Consumer Credit Directive regulations. There is currently a great deal of consumer confidence in the OFT and Trading Standards. Any change would be confusing for consumers and businesses that have established relationships, contacts and confidence in the current regime. Consumers are familiar with the OFT and understand what it does and how it protects them. Consumers would need to be re-educated which will take time and reduce consumer protection and effective market operation during the transition.

77. We note that the FCA will be required to conduct cost-benefit analysis and carry out a full public consultation before making or amending rules. As has been seen from the Impact Assessment to this consultation, a cost-benefit analysis can be meaningless when the costs are unknown and the benefits not demonstrable. Interestingly, the OFT refuses to undertake either an impact assessment or cost-benefit analysis during consultation on any of its regulatory guidance. If the FCA is required by statute to conduct cost-benefit analysis and carry out a full public

consultation before making or amending rules, we see great potential for a string of Judicial Reviews where cost-benefit analysis has not been properly undertaken, or where rules have been imposed despite the costs outweighing the benefits (as often happens now).

78. Many businesses have experience of how estimated regulatory costs for the implementation of new regulations in 2004, the Consumer Credit Act 2006 and the EU Consumer Credit Directive have far exceeded prior impact assessments made by officials. Here is one specific example of how a subsequent cost-benefit analysis significantly undermined the assumptions that had been made at the outset. On 13 March 2007 the DTI published details of a revised draft Statutory Instrument: *The Consumer Credit (Information Requirements and Duration of Licences and Charges) Regulations 2007* which was laid before Parliament on 6 April 2007. It also published an independent analysis commissioned from *PricewaterhouseCoopers* (PwC) of the challenges facing the consumer credit industry in meeting the requirements in terms of both time and cost. The report suggested that the costs would be significantly higher than estimated and that the industry would need more time in which to comply with the regulations. It also indicated that the post contract regulations as originally published in the draft SI in August 2006 failed to meet the Better Regulation Task Force's *Principles of Good Regulation*. PwC estimated the median costs for business charges as £12 million, the average total implementation cost to be £17.3 million and that the overall costs to business of implementing the transparency requirements may be in the order of £500 million:

> *For the larger lenders, the potential costs of complying with the post-contract information requirements within the 2006 Act and the draft SI are expected to be very considerably in excess of those estimated by the DTI in its Regulatory Impact Assessment: we believe that the one-off costs arising from the need to adapt IT systems alone is likely* ***to be at least 40 times that estimated by the DTI and, for some lenders, well over 100 times the DTI estimate*** *and, in addition, there will be significant recurring costs as a result of lenders' need to deliver additional documents to their customers.*

79. The identification that some costs could be between 40 and 100 times those estimated in the DTI RIA suggests that the value of impact assessments and cost-benefit analysis carried out by officials who have little knowledge of the actual implications for businesses, may prove to be totally inadequate under the FCA regime and therefore routinely open to challenge.

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

80. It is asserted that: *By expanding the remit of the regulatory regime for retail financial services to include consumer credit, there is also scope to promote better outcomes for consumers,* but it is not analysed, demonstrated or evidenced what such *better outcomes* are. **More** regulation does not automatically predicate that **better** regulation will result.

81. Significant regulatory changes were introduced by new regulations enacted in 2004 and the Consumer Credit Act 2006, some of which have only recently been

fully implemented. In addition, adoption of the maximum harmonisation EU Consumer Credit Directive by the UK has resulted in further changes being fully implemented by 1st February 2011. It is hard to determine what regulatory problems remain, particularly from the consumer perspective. If there is still significant consumer detriment in the market, that would be indicative of consistent and on-going regulatory failure. Yet none is identified in the current consultation.

82. We do not consider that an FSMA-style supervisory approach will enhance in any way effective and appropriate consumer protection in relation to unsecured consumer credit.

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.

83. We see no advantages in changing the requirements of the Consumer Credit Act 1974 as amended by the new regulations enacted in 2004, the Consumer Credit Act 2006 and the EU Consumer Credit Directive regulations.

Q12. Do you agree that transferring consumer credit regulation to a FSMA-style regime to sit alongside other retail financial services regulation under the FCA would support the Government's objectives (as outlined in paragraph 1.18 of Chapter 1)?

84. Unsecured consumer credit is entirely different from other financial services as we have argued above. This is the most fundamental regulatory change proposal for consumer credit ever. Yet the *one size fits all* approach is unlikely to be effective given the diversity of the market. **It is entirely unclear what the Government vision for the consumer credit market actually is**. Consumer credit is a growth engine for the economy. The proposed level of regulation would stifle it. Yet the Prime Minister has spoken publicly regularly asserting that the Government wishes to encourage enterprise (particularly with smaller businesses) and stimulate growth. The current regulatory proposals for consumer credit oppose this policy objective.

85. Consumer credit, as regulated by the OFT, is often used to service consumer needs, desires or opportunities. The majority of users of unsecured consumer credit manage their income and expenditure and the peaks and troughs of financial commitments very well. However, they often do not have the financial reserves and capacity to allow for unexpected events, such as replacing white goods; repairing their vehicle; paying for educational school trips and events and providing for Christmas and birthdays. Credit is used as a way to manage the peaks and troughs of family life. At the other end of the spectrum, mortgage credit is a major long-term decision to service a lifestyle aspiration. The decisions to borrow are based on entirely different criteria. Also the levels of lender risk are very different and so is the need to regulate lenders' capital reserves.

86. *In taking over part of the FSA's current role, the FCA will take a tougher, more proactive and more focused approach to regulating conduct in financial services and markets than has the FSA.* If the aims of the FCA are to take a tougher, more proactive and more focused approach to the regulation of banks, building societies and mortgage products, by increasing their remit to cover consumer credit, this will dilute the FCA's ability to meet these aims and its focus will be adversely affected by the added complexity of more diverse products. The FSA has been regularly criticised for not following its own regulatory procedures and processes. We wonder how the FCA would be any different.

87. *No one organisation is clearly accountable for performance against a set of clear statutory objectives.* It is difficult to envisage how a clear set of objectives could be created that are appropriate for the range of credit products that the FCA would be regulating, in particular for short-term loans such as payday loans and home credit compared with overdrafts, current accounts and mortgages. Whilst we can see the benefits for firms that are currently regulated by both OFT and FSA, we do believe that firms which are currently only regulated by the OFT (because of the simple nature of their products) should continue to be regulated by the OFT.

88. *The general requirement for primary legislation to amend the CCA makes it very cumbersome to deregulate.* However, by its very nature this gives businesses certainty in the regulatory framework within which they operate. A move to a purportedly more flexible and responsive regime may well be unmanageable for smaller firms, and could turn out simply to be bureaucratic rather than actually flexible and responsive. Additionally, 40 years of experience, application and interpretation of the law under the Consumer Credit Act 1978 would be discarded for an untried system. The potential for commercial confusion and significant consumer detriment is very high indeed.

89. It may be impossible to undertake a systematic overhaul of the current consumer credit regime because of the constraints of the EU Consumer Credit Directive. There also needs to be time to monitor the effectiveness of the new Consumer Credit Directive regime, before moving through yet another transitory period. The consumer credit industry has just gone through more than seven years of uncertainty and transition following the new regulations enacted in 2004, the Consumer Credit Act 2006 and the EU Consumer Credit Directive. To follow this with further regulatory changes, transition periods and more uncertainty may result in market exit and also goes against the Government's aims to create clarity and coherence. There will be a disproportionate impact on smaller firms, including extensive compliance costs. Just over one third of OFT licensed firms are sole traders. Many firms are currently struggling to accommodate recent major regulatory changes and their associated costs. A transfer of consumer credit to the FCA is likely to result in further new obligations for these firms. Whilst the Government acknowledges its awareness that such a transfer is likely to incur costs for firms, particularly those not currently authorised by the FSA, it seems to take little account of this. The transfer would also mean major and costly changes to IT systems and training of personnel. New systems would be required to comply with the new rules and to demonstrate different modes of compliance. There will be a new requirement for firms to submit regular reporting returns. There will be an entirely new authorisation regime which requires new supporting material.

There will be a risk of higher fines and greater public censure of firms. It is also proposed that agreements already in existence should be included in any transfer of consumer credit regulation to the FCA. This would present a major upheaval and resource burden to firms.

90. The Government says it is not in a position to give assurance that firms that currently hold a consumer credit licence would automatically be allowed to operate in the areas covered by the licence. This presents massive uncertainty to firms, in particular consumer credit firms that offer a range of products which would not be sustainable if their ability to offer particular products was denied, since it is a mix of credit and non-credit products that make their businesses viable. There is a significant increased risk of market exit, reduced competition, restriction in the supply of regulated credit and a higher incidence of unauthorised trading. It is also patently unfair.

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?

91. We consider that these have been satisfactorily enumerated in answers to previous questions.

Q14. Are there specific issues that you believe the Government should consider in assessing the merits of option 1? How could these be addressed in the design of a new regime as proposed in option 1?

92. The Consumer Finance Association view is that all unsecured consumer credit, pawnbroking, hire purchase and conditional sale agreements should remain regulated by the Consumer Credit Act 1974 as amended. Credit secured on property build on land should be regulated under an FSA style regime as is mostly the case now. The remaining anomalies – bank current accounts and overdrafts, credit cards issues and credit secured other than on property build on land, where there are real evidenced problems of Consumer Credit Act 1974 regulation, should be addressed and resolved separately without subjecting the entire unsecured consumer credit market to unnecessary, costly and confusing upheaval that has yet to be shown to have any benefits for businesses or consumers.

Q15. If you do not agree with the Government's preferred option 1, do you have 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 2?

93. The fit between the Consumer Credit Act 1974 and the relevant regulatory authority's wider objectives and principles is less of an issue if the concept of Consumer Champion is removed from the remit of the relevant regulatory authority and placed elsewhere – since a Consumer Champion and independent, even-handed regulatory action are different policy objectives and not really possible to achieve by a single body. We agree with the House of Commons Treasury Committee comments in its Seventh Report of Session 2010–11:

branding the FCA as a consumer champion would be inappropriate, confusing, and potentially dangerous.

94. The legal or practical issues which might preclude the inclusion of the Consumer Credit Act within the remit of the relevant regulatory authority are primarily concerning the EU Consumer Credit Directive. The Government has committed itself not to gold plate EU legislation and will simply copy out the requirements. The EU Consumer Credit Directive has just been incorporated in the Consumer Credit Act 1974. If that legislation is repealed, as is planned, then the FCA Rule Book would not be able to enhance any of the maximum harmonisation requirements in the Consumer Credit Directive, including not regulating at all loans of less than €200. This would immediately remove many of the requirements of the current Consumer Credit Act 1974, and the OFT regulatory guidance based upon it – since that of itself currently gold-plates many of the Consumer Credit Directive requirements. This may well result in significant reduction in consumer protection as compared with the current regime.

95. If the Consumer Credit Act 1974 regime is retained as we recommend, there are existing synergies between the activities and products regulated by the Consumer Credit Act and the existing activities of the OFT, which also has the availability of relevant skills and resources.

Chapter 3

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.

96. The core elements of the current FSMA regime that the FCA might consider applying include authorisation requirements, fee arrangements, Approved Persons regime, regular reporting and supervision and enforcement provisions. These elements would place an unfair and disproportionate burden on sole traders and smaller businesses. Those holding a consumer credit licence issued by the Office of Fair Trading are subject to a robust fitness test. This has not resulted in any significant consumer detriment or market failure. Also the requirement for firms to hold an adequate level of capital or minimum capital requirements are unnecessary for unsecured consumer credit suppliers since they take 100% of the financial risk. If they fail, there is no consumer loss or detriment.

97. No consideration appears to have been given to the situation regarding lenders who are based outside the UK in the EU (and one of the EU Consumer Credit Directive objectives is to promote cross-border lending), particularly lenders who are not banks; or indeed lenders who may be located outside the EU and lend online. The current system supervises these well but it is hard to see how the proposed FCA methodology could do so.

98. Our very significant concerns on the suitability of the provisions of an FSMA style regime are detailed at length in answers to previous questions.

Q17. Do you agree that statutory processes relating to FCA 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 regulation under a FSMA-style regime?

99. Whilst proportionality is mentioned frequently in the consultation document, no process by which it might be achieved is discussed. It is asserted that the FSA has a proportionate approach to the supervision of Credit Unions, but this would be no model for commercial lenders, and indeed the approach did not prevent the very large Leeds Credit Union from foundering. It is the very lack of a positive proportionate approach that will, in our view, lead to the demise of a great number of non-bank providers of unsecured consumer credit, pawnbroking, hire purchase and conditional sale agreements.

100. It would be proportionate to follow the EU Consumer Credit Directive and exempt all loans valued at less than €200 from regulation. It would also be proportionate to propose reduced regulation for unsecured loans below say, £1,000. But we see little inclination to adopt any such measures.

101. The fee structure is simply more expensive than the current regime, so it matters little how fees are scaled, virtually all businesses will have to pay more. Firms that are dual regulated will only have to pay for a single authorisation, but this is a negligible saving in relation to the additional costs imposed by the FCA regime.

102. There are additional compliance and resource burdens on smaller consumer credit firms that are least likely to be able to absorb them and most likely to be affected by any change.

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

103. The implication is that since industry has to handle all the increased regulatory burdens and cover all the costs, the massive increase is of little concern to the Government. What is overlooked, however, is that 40% of unsecured consumer credit is granted by non-banks. The only source of revenue for these businesses is from customers, whereas banks can subsidise the costs of their lending activities by offering low rates of return on consumer investments. So it will be the consumer alone who will pay for the increased regulatory costs within non-Bank businesses (where there could be no cross subsidy from investment or deposit-taking earnings), yet s/he is offered no quantifiable benefit for his or her money, only the prospect of higher credit prices, less product choice and reduced access to credit generally.

104. We consider that the House of Commons Treasury Committee comments in its Seventh Report of Session 2010–11 are particularly applicable to suppliers of unsecured consumer credit that are not banks::

We are concerned that the current proposals for reform say relatively little about some key segments of the UK financial sector. Inappropriate regulation of non-banking sectors could cause serious and unintended damage to companies within *those sectors, and to the UK more widely. As the Treasury's consultation evolves, it is important that the Government clarifies the regulatory impact of its proposals on the non-bank sectors.*

105. There appears to be little sense in paying higher fees for a system that offers no demonstrable (or indeed measurable) consumer protection or benefits to business over the existing system.

Q19. The Government welcomes:

- evidence relating to experiences of 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.

106. Use of the Authorised Representative regime is suggested as a way to reduce the costs of authorisation. However the AR regime would not be suitable for the majority of consumer credit companies and the Government has not been able to analyse or evidence this: *It is not yet possible to say what consumer credit activities may be suitable for the AR model, but certain forms of credit broking may be potential candidates. … It would be important to … consider risks associated with an AR regime for activities which are considered high-risk under the current OFT risk model …. In extreme cases, it may be that the burden of compliance for some firms to continue with their existing credit-related activities is too high. In this case, such firms may leave the market.*

107. When the FSA took on the regulation of mortgages and general insurance in 2004 and 2005 the majority of small insurance companies, insurance brokers and mortgage brokers simply ceased to exist. Offers of free insurance with some loan products ceased - to the detriment of consumers. The market is now dominated by large businesses. The AR system has demonstrably not worked well. One trade body, the Consumer Credit Association, used to have its own insurance firm whose products were available to its small businesses members, many of whom were sole traders. It could not be managed under the new regulatory regime and was sold. Within a short period of time the services previously made available to businesses belonging to the Consumer Credit Association were terminated. Interestingly, the FSA characterised the demise of many small businesses as it being effective in keeping "rogue" firms out of the market, announcing with apparent glee that it had seen the demise of some 600 firms, in a press release on 7th December 2005. There was no evidence offered that these were "rogue" traders, the vast majority had simply been unable to clamber through the complex authorisation process.

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.

108. The Consumer Finance Association has no observations to offer on this question.

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.

109. Self-regulatory codes operate well under the current system for unsecured consumer credit. With a FCA Rule Book there would be little or no incentive for self-regulation, nor indeed any need for it – unless SMEs were exempted from tranches of the rules, which seems extremely unlikely.

Q22. 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.

110. Whilst deregulation is cited as a policy objective, there are no substantive proposals as to how this might be achieved. It does not appear that the Government is putting any weight behind a deregulatory agenda. Indeed the whole tenor of this consultation is to enhance regulation. The FSA regime did not reduce regulatory requirements or oversight, rather they were increased significantly. There is no deregulation of any substance associated with the advent of FSA style regulation - in fact: *a tougher, more proactive and more focussed approach to regulating conduct in financial services and markets than has the FSA*,

111. Loans of below €200 should be exempted in line with the EU Consumer Credit Directive.

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?

112. Please see our response to Q17.

Chapter 4

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

113. The Government asserts that during any transitional period it would aim to minimise transitional costs, disruption, complexity and uncertainty for firms. But of course this will not be achievable. Neither a "big bang" (and the *big bang* of GSI regulation was both disruptive and costly) approach where everything comes under a new regime at one point in time, nor a phased transition, will be simple or we believe, effective. The transition periods for existing agreements under the provisions of the Consumer Credit Act 2006 and the EU Consumer Credit Directive

Regulations are a useful model showing how much time is required when the existing system is modified. This time period would be considerably longer if an entirely new regime is introduced.

Q25. The Government welcomes views on:

- how existing licensees could be dealt with; and

114. If Option 1 is embraced, we consider that all those who currently hold a consumer credit licence should receive automatic authorisation. The FCA consultation document states:

...the Government is not in a position to give assurances that firms that currently hold a consumer credit licence would automatically be allowed to continue to operate in the areas covered by the licence

115. This seems particularly unfair since with the reforms of the licensing system which took effect only in April 2008, licences were granted in perpetuity rather than just for five years as had been the case formerly. They were granted on a risk based analysis and the new scheme has not been shown to be in any way ineffective. Failing to give existing consumer credit licence holders automatic FCA authorisation will lead to immediate departure from the market by a great many SMEs to the detriment of business, employment and customers generally.

- factors that should be considered in determining whether a modified approach could be adopted for particular categories of licensed firms.

116. The Consumer Finance Association has no observations to offer on this question.

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

117. The Consumer Finance Association has no observations to offer on this question. We do not think there is any necessity for a new fee structure.

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

118. The Consumer Finance Association has no observations to offer on this question.

Q28. The Government would welcome evidence on the experience of firms, consumers and their representatives in relation to similar previous transitions, for example the extension of FSA jurisdiction to new markets since 2000.

119. What follows is evidence from the Risk and Compliance Director of a non-bank provider of consumer credit and relates to the transition in October 2004 and January 2005 to FSA regulation covering the sale of General Insurance products linked to second mortgages and unsecured loan products. It demonstrates clearly how matters actually work out in practice compared with the intentions of policy makers. We remain of the view that the danger is that a new, inexperienced

monolithic regulator will be unable to cope with the diversity of unsecured consumer credit with which it will be presented, leading to confusion, inconsistency and breakdown of service much as happened in the early years of the Child Support Agency, the National Criminal Intelligence Service and the Criminal Records Bureau.

120. "The firm remained regulated by the OFT for CCA matters and became authorised and regulated by the FSA for the sale of associated General Insurance products, thereby creating a dual regulatory structure. Preparation for the regulatory changes (pre-transition) required an in-depth project to ensure that the requirements of the new regulatory regime were understood and met. This required extensive resource over a period of 12 months to meet the requirements of the FSA rulebook which involved significant cost to the business financially and in staffing resources to meet both regulatory and process changes required over and above those already in place for the regulatory authority (OFT). It was estimated that the costs were c£1m, further increased by additional recruitment.

121. "Throughout the relationship, supervision and fees were never considered to be proportionate to the risks that the business may have represented to the market either in terms of overview by the regulator or the fee costs, or the support available. They were never considered "good value for money".

122. "The supervisory relationship with the FSA was risk based. It was frequently unclear what risks, if any, were perceived by the Regulator. Clarification was seldom forthcoming and the response was generally couched so that it was up to the firm to determine those risks. Supervisory visits would then be critical of our assessments at times. It was evident that the Supervisor, who changed on a number of occasions, did not have a clear understanding of the business or business model often necessitating repeat provision of information to new Supervisors, usually directly at the FSA's offices, thereby incurring additional expense. There was often confusion between regulated activity such as unsecured loans with PPI and other credit products that were not regulated by the FSA. Personal and politically motivated view points were often evident when dealing with regulatory personnel (sometimes motivated by their personal perspectives) due to a lack of clear understanding on their part.

123. "The change of Regulator involved the firm in significant additional costs due to the enhanced resource needed to meet regulatory reporting (regulatory returns, complaints data and thematic assessments), often effectively duplicated. Staffing resources and costs, directly chargeable to regulatory monitoring and compliance, including the fees payable to the Regulator, increased by a factor of 4-5 over 3 years to c£4m pa. The FSA charged an application fee and an annual fee, compared with the initial licence fee and 5 yearly fee levied by the OFT.

124. "Processes to meet FSA rules and guidance became very onerous of themselves. The sales process extended to over 40 minutes following regulation, as the rules and guidance changed, significantly increasing the staffing requirements. Despite operating to a standard which the FSA had confirmed was acceptable in terms of process and Treating Customers Fairly, the Financial Ombudsman Service often took a different view, exampling the lack of cohesive regulation. Monitoring of

processes and maintaining training records was also a significant drain on resource substantially impacting costs.

125. “Costs associated with supervisory reviews (ARROW) were high, requiring significant people investment in the preparation of data requested prior to visits. When visits were delayed, costs escalated due to maintaining data in a current state and reprinting. It was often questionable during visits whether the information had been thoroughly reviewed beforehand by the Regulator.

126. “As the thinking and stance of the FSA evolved, so did the rules and guidance. This created a constantly and frequently changing position with rules and guidance often becoming retrospective. This led to operational difficulties in managing those changes, due to their frequency.

127. “Rule and principles based regulation resulted in regulatory creep without the clarity of legislation to support it. Interpretation and implementation was at times difficult and lacked guidance from the Regulator, particularly around the area of Treating Customers Fairly where guidance across the industry was singularly unclear, especially how it was to be monitored and evidenced. There was further regulatory creep as it was often more convenient to adopt a higher level of regulation even if it was not necessarily directly required.

128. “It was found that the Regulator seemed to get involved in issues that were outside its remit such as Data Protection. Using the Treating Customers Fairly principles it would also involve itself in complaints which were dealt with by the firm and whilst not binding would pass judgement on how it felt redress should have been handled - which is actually the remit of the Financial Ombudsman Service. It was found that the reaction to minor issues reported to the Regulator was disproportionately high. It was believed that this was in part due to a lack of understanding and applying a one size fits all approach.”

A NEW APPROACH TO FINANCIAL REGULATION – CONSULTATION RESPONSE

A RESPONSE BY CHRISTIANS AGAINST POVERTY

CONTENTS

Introduction

About Christians Against Poverty

Christians Against Poverty (CAP) was founded in 1996 to help anyone suffering as a result of debt and financial difficulties. CAP offers a practical solution through a combination of debt counselling, financial education, creditor negotiation and personal support.

CAP works out a budget which prioritises food and essential bills, and negotiates with creditors to arrange affordable debt repayments. A CAP Account is offered to help people to budget and physically pay their bills. With our help, the poorest and most marginalised are empowered to work their way out of debt and learn good financial habits for the future.

In 14 years, CAP has grown from one man to a national charity with 150 centres helping more than 400 families a month.

Permission to Disclose and Contacts

Please note that Christians Against Poverty consents to public disclosure of this response and welcomes any queries relating to it from all interested parties.

For any queries or further information about this response please contact:

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Responses to Individual Questions

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

   We agree with the stated shortfalls and limitations of the CCA. Crossover between the different regulatory bodies is confusing for the consumer and onerous for creditors. There is often the potential for less accountability and oversight of creditors due to the overlap of statutory bodies.

2. **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?**

   See answer to 3 below

3. **Evidence relating to the consumer credit regime, including; 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 duplication or burdens on firms and/or inconsistent regulation of similar types of business.**

   We believe that an example of an unsatisfactory product is the Northern Rock 'Together' product. This product is partially regulated by the FSA (the mortgage) and partially regulated by the OFT (the unsecured element). This has the potential to cause confusion for consumers as, in our experience, they are not sure whether or not they have two secured debts. From a debt counselling perspective, it is operationally problematic because payments for both elements are sent to one reference number. In addition, any correspondence or complaint with Northern Rock is dealt with in two different departments. We agree that it appears burdensome for one product to have two regulators.

   We also see the implementation of the Rule Book as an excellent idea but would like to see consultation with all sectors in its creation.

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

   We consider this proposal as a welcome change to the consumer credit regime. We believe that particular emphasis should be placed on protecting the consumer.

5. **Views on the impact a unified regulatory regime for retail financial services may have in terms of clarity, coherence and improved market oversight.**

   As an organisation working solely under the regulation of the OFT, we hope these changes will lead to improved market oversight. By moving the industry away from a reactive regulatory system to a proactive regulatory system, a greater accountability would be created.

6. **Views on the role of institutions other than the OFT in the current consumer credit regime, and the benefits they may confer.**

   From a consumer protection perspective, local Trading Standards departments provide a valuable service that should not be eroded or impacted negatively as a result of the proposed changes. The issues Trading Standards deal with often impact the vulnerable and the elderly on a local level that may not reach the notice of central Government, due to the locality of the issues and the perceived disinterest of Government by the consumers affected.

7. **Views on factors the Government or 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.**

   We feel that a firm application of the rules set out by the CPMA will be key to the success of the changes and the proactive nature of the new regulator will aide this. The current system of the OFT being purely reactive and only working within guidelines does not provide adequate consumer protection, even though the OFT is consumer focussed. We believe that if the rules had the force of law, regulated firms would possibly take their obligations more seriously. In addition this would increase consumer confidence.

   We feel that one possible enhancement of the current system would be to bring High Court Enforcement Officers under the regulation of the CPMA. There is currently no real protection against malpractice of HCEO's. In addition, creditors do not consider the conduct of HCEO's to be their responsibility. This can lead to reduced accountability during the process of debt collection.

8. **Evidence relating to; the use of consumer credit by small and medium sized enterprises, whether the protections currently afforded by the CCA are appropriate and cover the right groups of businesses, and the costs and benefits of considering extending FSMA-style conduct of business rules to a wider group of SMEs.**

   To date, Christians Against Poverty has had no experience of this.

9. **Views on how consumer credit firms and consumers may be affected by the increased flexibility that could be provided by a rules based regime.**

   Increased flexibility could cause long term instability with the rules constantly changing due to the ease at which the rules could be changed. The initial rules set out should be carefully considered to avoid multiple small changes and knee-jerk reactions to current hot topics within the industry.

   However, as previously stated, we do prefer a rules-based regime which provides protection for consumers with the force of law.

10. **Views on the impact a FSMA-style supervisory approach may have in terms of ensuring effective and appropriate consumer protection.**

    The change in style of supervision from reactive to proactive will impact consumer protection in a positive way. Such a system would create a clear accountability for the regulated firms and would hopefully reduce malpractice.

11. **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.**

    The current regime ensures a ‘double’ protection for the consumer which could be continued if the proposed Appointed Representative role mirrors the role that is used by FSA regulated organisations.

12. **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?**

    We are keen to ensure that the consumer focus that the OFT currently provides is not diluted. By changing the regime to be industry focused there is a danger that the consideration for the consumer is moved down the priority list.

13. **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?**

    One potential disadvantage by changing the regulatory framework, is that existing consumer protection could be lost. This is a concern to Christians Against Poverty. The advantages of a clear rules based regime should not be traded in for lesser consumer protection.

14. Are there specific issues that you believe the Government should consider in assessing the merits of option 1? How could these be addressed in the design of a new regime as proposed in option 1?

See the answer to 15 below

15. Do you agree with the Government's preferred option1?

We do agree as long as consumer protections are retained or increased.

16. Views on the suitability of the provisions of a FSMA-style regime, to different categories of consumer credit business.

We welcome these safeguards being built in to protect consumers and increase scrutiny of the financial industry.

Any non-profit organisation, such as ourselves, may have difficulty in meeting regulations on holding certain levels of financial reserves as the point is to distribute monies we receive in furthering our charitable aims, not retaining it. We feel charities and non-profit making organisations should be exempt from this.

Reporting requirements should avoid being an unnecessary burden, particularly on charities and non-profit making organisations as this could push them out of the industry leaving consumers with fewer options. However, we recognise the need for the CPMA to properly regulate services provided by charities such as CAP.

17. Do you agree that statutory processes relating to 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 regulation under a FSMA-style regime?

We would prefer to see fee raising arrangements based on the size of the turnover of an organisation, rather than on a risk basis. We would be concerned that a small organisation that is considered higher risk (but compliant) would be pushed out of the market due to excessive fees leaving the consumer with fewer options.

18. Views on key factors that would need to be assessed in considering fee arrangements for consumer credit firms.

Out of proportion fees should be avoided as the higher risk but smaller companies may have to pass on the fees they were charged to the consumer, making the service or product they provide more costly for the consumer. Larger companies have more resources and finances behind them and can afford bigger fees in order to subsidise the smaller companies. The fees charged should be based on the turnover of an organisation and not on a risk basis.

19. a) Evidence relating to experiences of the current appointed representatives regime.
b) Views on how an appointed representatives model might be applied to different categories of consumer credit activities.

To date, Christians Against Poverty has had no experience of this.

20. a) Evidence relating to the implications an appointed representatives regime might have for firms and consumers. Evidence relating to the experiences of the current group licensing regime

b) Views on how the professional bodies regime might be adapted for different categories of consumer credit activities.

To date, Christians Against Poverty has had no experience of this.

21. Views on the extent to which self-regulatory codes might continue to deal with aspects of lending to consumers and small medium enterprises.

Our experience is that self-regulatory codes are unworkable as they don't provide enough of a deterrent or a high enough level of accountability. Our preference is for regulations with the force of law.

22. Do you consider that there would be a case for deregulation of certain categories of consumer credit activity?

We consider that there are very few instances where deregulation would be of benefit. Deregulation must not lead to a loss of consumer benefits and protections. Even as a non-profit organisation, registered with the Charities Commission, we welcome regulation, as the Charities Commission is not well placed to understand our sector and enforce appropriate sanctions. The CPMA should regulate the industry alongside the Charities Commission who can continue to oversee charitable aims and ensure trustees are held to account as appropriate. It would seem burdensome to require the Charities Commission to become specialists in every sector of every charity that they oversee alongside their existing role.

We are pleased to see a shift from reactive regulation to proactive regulation and do not see how deregulating some sectors will fit with this shift.

23. 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?

As previously stated we believe that the regulation of HCEO's is very important in relation to creating an accountable regime for the regulation of consumer credit.

24. Views on how the treatment of agreements already in existence could be approached.

Following the implementation of the CPMA, any creditor actions taken on existing agreements should come under the new regime and be regulated by the CPMA. This will provide protection for consumers and ensure creditor actions are monitored across the industry. This will lead to consistency across the industry and clear creditor standards moving forward. However, provisions should remain in place in relation to consumer rights for any agreements put in place pre-CPMA. Provisions that were in place at the time the credit agreement was signed, such as the option to apply for a Time Order, should continue to be available for consumers who wish to utilise those terms within their agreements.

25. a) Views on how existing licensees could be dealt with

b) Views on factors that should be considered in determining whether a modified approach could be adopted for particular categories of licensed firms.

Every organisation that is to be regulated under the new regime should apply and accept the initial costs of re-licensing for fairness and equality across the board. We do not accept that a modified approach based on risk would be fair to consumers as the larger costs of more risky organisation are likely to be passed on to the consumer in the form of higher interest, charges and fees.

26. Views on key factors that would need to be considered in transitioning from the current to a new fee structure.

Altruistic organisations, charities and not-for-profit organisations should not be pushed out of the industry by fee levels. This would be to the detriment of consumer choice and would increase personal debt levels and insolvencies. Fees should be based on turnover not risk, as previously stated in the answer to question 25. In addition, the Government should ensure that charities set up for the public good are given extra consideration as to the level of the fees charged.

27. Are there other factors the Government should take account of in considering transitional arrangements?

Protections from the previous regime should stand i.e. the provision of Time Orders. Consumers understood the terms they had signed up for and the protections they conveyed when the agreements were taken out. However any actions taken in relation to enforcement of agreements by creditors should be regulated by the new regime to ensure consistency and professionalism across the industry.

28. Evidence on the experience of firms, consumers and their representatives in relation to similar previous transitions.

To date, Christians Against Poverty has had no experience of this.

Evidence

A new approach to financial regulation: consultation on reforming the consumer credit regime

Response by Citizens Advice to HM Treasury and BIS

March 2011

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Introduction

Citizens Advice welcomes the opportunity to respond to HM Treasury and BIS consultation on reforming the consumer credit regulatory regime.

The Citizens Advice service provides free, independent, confidential and impartial advice to everyone on their rights and responsibilities. It values diversity, promotes equality and challenges discrimination. The service aims:

- To provide the advice people need for the problems they face; and
- To improve the policies and practices that affect people's lives.

The Citizens Advice service is a network of over 400 independent advice centres that provide free, impartial advice from more than 3,000 locations in England and Wales, including GPs' surgeries, hospitals, community centres, county courts and magistrates courts, and mobile services both in rural areas and to serve particular dispersed groups.

In 2009/10, the CAB service in England and Wales dealt with over seven million problems from 2.1 million people. This included over 2.3 million problems about debt from over 625,000 people and 140,574 non-debt problems relating to financial services. Of the debt problems, 1,067,848 related to consumer credit debt problems. Consumer credit formed 20 per cent of the non-debt-related financial services problems.

Chapter 1: the case for reform

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

To some extent. The assessment does not cover the fact that bad practices are widespread in the consumer credit market, including irresponsible lending, high contingent charges, mis-selling of services such as debt management and individual voluntary arrangement practices and harsh debt collection and enforcement practices. Citizens Advice has a large and ever-growing data-base of evidence about bad practices by all parts of the consumer credit market. HM Treasury and BIS are welcome to view our evidence database to inform their work on regulation of financial services.

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 would agree with some of the points made in paragraph 1.17. In particular we would agree that there is lack of coherence in consumer protection and market oversight, there is confusion and duplication for both consumers and firms, and the CCA regulatory regime is too reactive and insufficiently flexible. We would, however, question the assumption made that the accountability split is a significant problem for all consumer credit businesses, and we would strongly disagree with the final point that deregulation of a market is needed, given that bad practice in the market is widespread. This does, however, provide an opportunity to simplify and modernise the fine detail of consumer credit regulation.

The only issue that is missing from this list is that consumers enjoy differential levels of protection under the FSMA and CCA regimes. This is an issue we highlighted in our recent supercomplaint on the cold calling and up-front fees charged by credit brokers. We pointed out that real-time promotions by telephone or SMS are banned by MCOB, but not by the CCA regime.

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.

Risks faced by consumers in consumer credit markets

CAB evidence shows that these risks include:

- Increasing indebtedness, whether from irresponsible lending, high charges, mis-selling, debt collection and enforcement practices or inappropriate debt management
- Loss of home or essential goods as a result of indebtedness
- Adverse impact on health, particularly mental health
- Lack of understanding of the terms of the agreement they have taken out,
- Threats by loan sharks
- Impact of fees and charges
- Getting a poor deal
- Unacceptable and harsh debt collection and enforcement practice

Here are only a few of the most recent cases we have received on these issues

> A Hertfordshire CAB saw a recently widowed woman. She and her husband had taken out a bank loan in October 2010 which consolidated a previous loan of £12,000 and other debts. At the time, her husband who was terminally ill with prostate cancer, was in receipt of statutory sick pay and the client was not working. Although the bank were aware of all this, they persuaded the client to put the loan in her name only. Her husband died in January 2011, and the client now had no income, but was still liable for the repayments on the loan. The CAB were helping her apply for benefits and make a complaint about mis-selling to the bank.
>
> A Hampshire CAB saw a woman who had got into debt after she lost her job and could only get a lower paid job. She had to sell her home because she had mortgage arrears. As her home was in negative equity, she owed the lender money. In total she owed £20,000. In May 2009 she first entered into a debt management agreement with a fee charging company. She agreed to pay £300 a month to them and they took the whole of the first two months' payments as their

management fees, so for two months nothing at all was paid to her creditors. There were continuing problems, so she ended the agreement and contacted another debt management company to take on her case. She sought advice from the CAB after she had been contacted by her former mortgage lender who said they had received no payments from the debt management company. The client tried to sort this out herself but the debt management company were extremely unhelpful. The CAB commented that the client had been trying to deal with her debts for two years, but because of the way commercial debt management companies work, most of her money was not going to her creditors.

A Gloucestershire CAB saw a lone parent with three children. Her only income was from benefits. In April 1999 following the break up of her marriage, the client purchased a car on what she believed to be an hire purchase agreement. In August 2010 she was in financial difficulty and contacted the finance company for help. Help was refused and she was told to make the payment or lose the car. She subsequently contacted the CAB and was given advice over the telephone as to her actions on the car (on the assumption it was on hire purchase agreement). She wrote to the company volunteering the surrender of the vehicle, as she would have been entitled to do if it was a hire purchase agreement. The company sent her a default notice and then an order for the return of the vehicle. On the surrender of the vehicle she was told that she would have to pay £7,248.20. Subsequently she had been told that the payment had grown to £12,594.40. Later examination of paperwork revealed the vehicle was purchased by way of a bill of sale, where the lender had the right to repossess at any time and hire purchase rights did not apply.

A CAB in Lincolnshire saw a man who fell into arrears with three credit agreements to his bank after he lost his job. He kept the bank informed but, despite solicitors arranging a minimum payment plan he was continually harassed by phone to make further payments. He was called three times a day by each of three departments within the bank. Some calls were at 11.30 p.m. As a result, the client became suicidal and was now reliant on anti-depressants.

A Berkshire CAB saw a man who owed £14,000 which had accrued since his work as a builder became scarce and his marriage broke down, leading to severe depression. He was being harassed by a debt collection firm acting for a high street bank and a credit card company. The debt collector kept contacting the client's ex-wife, who was not liable for the debts, and with whom the client no longer lived. The debt collector also told him that he should borrow money to pay the debt, he could go to prison for non payment, bailiffs could go to the wife's or parents' home to seize goods and that the advice given by the CAB was not correct. When the CAB rang the debt collection firm, the adviser was put on hold and kept waiting for several minutes. The debt collector then asked to speak to the client to get his authorisation, and immediately tried to engage the client in further conversation about repaying his debts. He had no money at all with which to pay off his debts. The client, who was already very depressed, was extremely distressed because his ex-wife, who was also suffering from depression, was being harassed because of him. As a result of the calls from the debt collector, he was worried he might go to prison or that his ex-wife and his parents would have their goods seized by bailiffs. He told the CAB that he felt suicidal as a result of his treatment by the debt collector.

A West Midlands CAB saw a self-employed plasterer who was living with his parents. At the time he sought advice, he had little work and therefore little money. In the last six or seven weeks before seeking advice, he had only earned £120. He had never claimed benefits, and no one in his family had ever done so or would do so in the future. The client had accumulated over £50,000 worth of debt. He was so ashamed of the debt that he had not been able to explain the problem to his parents. The client told the CAB that things had got so bad that in October 2010 he went to a friend of his to see if he would lend him some money. The 'friend' lent him £2,000 so he could pay off the arrears on his debts. In January 2011, the 'friend' sent him a text message demanding £2,000 plus £1,200 interest by 1 February. The text message also said that if payment was not made in full by that date, the matter would be passed on to a loan shark who would charge him double and would also 'beat him up'. The client was unable to pay and went missing, leaving a suicide note. He was found by the police two days later wandering in the street with his wrists slashed. They took him home after going through his mobile phone to try and identify him. The police found the threatening message from the loan shark and said they would take the matter up.

Key consumer protection provisions under the current regime and their effectiveness

The list in Annex A contains most of the key protections for consumers. In relation to their effectiveness:

Controls on credit brokers and credit intermediaries – *Cashing in,* our recent evidence report and supercomplaint to the OFT sets out our concerns that unscrupulous brokers are exploiting loopholes in the consumer credit legislation to make large amounts of money from consumers.

Pre-contractual information – some of these provisions have only just been introduced by the transposition into UK legislation of the Consumer Credit Directive. It is therefore too early to assess their effectiveness. We believe, however, that these provisions have the potential to provide better protection for consumers against irresponsible lending practices. We are very keen that the adequate explanations provisions are observed by firms in a way that is genuinely helpful to consumers. This is arguably one of the most important innovations introduced into UK law by the Consumer Credit Directive.

Withdrawal - again these provisions have been strengthened recently by the EU Credit Directive, giving consumers new rights to withdraw from agreements.

Post-contractual disclosure – These rights were improved by the Consumer Credit Act 2006. As far as we can tell, they have dealt with the problems we were seeing before its enactment in relation to consumers finding out towards the end of the agreement that they had substantial arrears.

Default/enforcement – These are all important protections for consumers, particularly the Time Order provisions under ss129 - 136 of the Consumer Credit Act. In our 2007 evidence report, *Set up to fail*, we recommended that these provisions needed to apply to all secured lending.

Linked credit agreements – This is an important protection for consumers when buying goods or services on credit. It means that the creditor is equally liable where something goes wrong with the credit. It has proved itself useful where consumers have bought items from companies that subsequently go into liquidation – for example in the recent recession, a number of people who had bought personal development courses with linked credit agreements from companies that subsequently ceased to trade, have been able to get the lender to organise replacement courses. Citizens Advice has long called for better protection for consumers' deposits when companies go into liquidation. We believe that the change in regulation is an opportunity to extend this protection to debit cards.

Unfair credit relationships – There is no equivalent in FSMA of the unfair credit relationships test which was introduced by the 2006 Act under section 140A of the CCA 1974. This provides the court with wider powers to release security, rewrite agreements and liabilities. In contrast, consumers only have a right of private action for damages for similar practices under FSMA. Whilst we believe that actions to challenge unfair credit relationships could be made more accessible to consumers, we are strongly support this part of the Consumer Credit Act, and believe its protection should extend to all financial services.

Redress via FOS - Citizens Advice supports the work of the Financial Ombudsman Service to provide a free independent complaints handling service on consumer credit and other financial services issues. Since FOS's jurisdiction was extended to all consumer credit issues, the CAB service has become more aware of FOS service, and are referring more cases to them. We also very much welcome the innovative work undertaken by the Financial Ombudsman Service to ensure that their service is accessible to all consumers. We strongly believe that the credit industry should be learning from FOS adjudication on complaints as to how to improve their policies, practices and procedures to avoid the need for consumers to complain to FOS in the first place.

We are however concerned that there are three major omissions from the list.

Firstly, **the voluntary termination rights** (ss 99 – 100 CCA 1974) for consumers with hire purchase agreements limits consumers' liability against the possibility of substantial indebtedness should their circumstances change and they need to give up the goods. In our response to the recent call for evidence on the BIS and HM Treasury consumer credit and debt review, we stated that these should be retained.

Secondly, section 39 of the Consumer Credit Act provides that **trading without the right sort of licence** is illegal, and under section 40 any loans made by a trader lending without the right sort of licence cannot be enforced except with leave of the OFT. In comparison, whilst section 19 FSMA states that trading without authorisation is illegal and any agreement made by the unauthorised person/firm is unenforceable, section 20 states that trading without the correct permission is not an offence, and does not make agreements unenforceable. Given the range of consumer credit businesses, we believe that this will need to be reconsidered for consumer credit.
Thirdly, the Office of Fair Trading has developed a body of binding guidance on business practices which supplements the requirements of section 25 of the Consumer Credit Act. We consider the guidance conveys a number of consumer protections which are important and should be retained.

The incidence of regulatory duplications or burdens on firms and/or inconsistent regulation of similar types of business

We do not have any comment to make on this issue.

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

We do not disagree with the objectives set out in paragraph 1.18. We welcome the objectives to maintain and, where possible, strengthen, consumer protection and to enable consumers to benefit from a responsive and pre-emptive approach to regulation.

We do, however, believe that the Government need to pay attention to detail when devising an appropriate regulatory system to cover all types of financial services. We believe that the new regulator needs to be able to intervene to prevent unsuitable and harmful products or product features coming to market. It should also be able to intervene to ensure that products come to market that meet the needs of all consumers, including the most vulnerable and marginal people.

Chapter 2: options for the future regulation of consumer credit

Overall comments on the regulatory options set out in paragraph 2.3

We do not agree with either option for the future regulation of consumer credit.

Whilst we agree that a unified regulatory regime for financial services is desirable, we have a number of concerns about option 1:

- Possible loss of important consumer protections. FSMA does not have the same substantive consumer legal rights that the CCA has
- A rules-based regime could be too high level, allowing bad practice to flourish. We believe this happened with ICOB, which did not take account of the particular emerging problems in the payment protection insurance market and which had to be revised. We also believe this happened with MCOB, which failed to prevent either irresponsible lending or unacceptable arrears management practices in the sub-prime mortgage market. The FSA is currently in the middle of a major fundamental mortgage market review to remedy defects in MCOB exposed by bad practices in the market. Finally BCOBS is too high level and has failed to address significant consumer detriment, such as use of the right of set off.
- Possible loss of the OFT regulatory requirement regime
- Loss of detailed sectoral binding guidance on the fitness test contained in section 25 of the Consumer Credit Act 1974
- Inability to intervene to address specific practices in sub-sectors of the credit market. The significant failure of the current consumer credit regime is that it has not been able to go far enough to micro-intervene when this is necessary because the OFT has not had powers to prescribe or direct firms to conduct their business in

a particular way. This defect will not be remedied by high level rules. We believe that the CPMA will need to re-think what rules-based regulation means to deal with the particular problems arising in a diverse and segmented consumer credit market.

Our concerns about keeping the status quo (essentially option 2) are:

- Lack of rule-making powers – defects in legislation can only be amended by primary legislation. This is costly and lengthy.
- No powers to order firms to compensate consumers affected by bad practice
- The maximum fine for breach of a regulatory requirement under the consumer credit regime is £50,000, compared to no limit under the FSMA regime
- No ongoing supervision of firms
- The OFT do not regulate the market – they regulate firms.

We believe that the Government should instead take the best of both of the current regimes, ie:

- Including important consumer protections in the Consumer Credit Act, and applying them, where appropriate, to all financial services
- Rule making powers
- Enforcement powers which combine regulatory requirements, with unlimited fines, and powers to order firms to compensate consumers
- Detailed sectoral rules which cover detriment in each sector
- Supervision of firms

We see no reason why the new financial regulator could not apply regulation whilst important legislative provisions which provide important consumer rights are also in place.

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.

We agree with the Government's analysis of the benefits of a single regulatory regime for financial services, although we do not agree that option 1 would provide an effective regulatory regime for consumer credit from a consumer protection perspective.

We believe that this could be a good opportunity to tackle the problems in regulation of insolvency professionals. Whilst debt management companies are regulated by the OFT, insolvency practitioners are mainly regulated by the Insolvency Service, who has delegated much of the detail of regulation to trade associations. We believe that this split of regulation has been ineffective in tackling bad practice.

Q6: The Government welcomes views on the role of institutions other than the OFT in the current consumer credit regime, and the benefits they confer.

Citizens Advice believes that it is important that the CPMA works closely with Trading Standards Services (TSS) to tackle problems at a local level. There are a large number of small firms who are licenced under the consumer credit regime - TSS may provide a better point of contact with the new regulatory regime for these firms.

We agree that the new regime would need to work closely with the specialist Illegal Money Lending and Scambuster teams to tackle unlicenced lending and financial services scams. It would also need to develop a close working relationship with the National Fraud Authority to tackle scams.

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.

We would like to re-iterate the points we made earlier in this response, that it would be disastrous for consumers if the new regulatory regime for consumer credit simply replicated the regime used to regulate retail banking ie high level prudential rules which leave too much to firms to interpret, plus the requirements of the Consumer Credit Directive. We consider that it is essential that the new regulatory regime includes an equivalent of the detailed sectoral guidance that the OFT has developed in the last ten years and which is binding on firms. CAB advisers have found this very useful to identify and challenge bad behaviour by firms of all sizes:

> A Bedfordshire CAB saw a single woman who owed £7,000 to five creditors. Token repayments of £1 per month had been agreed with three out of five of the creditors. However, one creditor, a catalogue company to whom she owed £52.20 in December 2010, rejected the offer, insisting on £5 every 28 days and continuing to add charges. By March 2011, the debt had grown to £81.37. The client came into the bureau in early March as she had been receiving phone calls from the catalogue company's in-house debt collector demanding payment of £5 per month, which they claimed the client had already agreed to pay. The client told the CAB that the company had phoned three times in four days telling her to pay £5 every four weeks, and if she did not, they would continue to phone her or she would face court action. The client who was y ill with bronchitis, was very upset and frightened by these calls, and was now too scared to answer the phone. She got into debt as a result of paying for her brother's funeral, and had been living without a cooker as she cannot afford to replace the broken one she has at home. The CAB commented that the catalogue company and their in-house debt collectors contravened the OFT's Debt Collection Guidance paragraph 2.8(d) which states 'contacting debtors directly and bypassing their appointed representatives' is an unfair practice and paragraph 2.6(f) which states that 'pressurising debtors to pay in full, in unreasonably large instalments, or to increase payments when they are unable to do so' is an unfair practice.
>
> A Hampshire CAB saw a disabled man whose only income was disability living allowance, incapacity benefit and a pension. He had a condition of the spine which was unlikely to improve. He had a number of debts including a number to his bank totalling just under £18,000. These were passed to a debt collection agency, who made repeated calls and texts to the client, demanding repayment despite the client's condition and inability to repay. They also proposed to visit the clients address without a set time or date (in contravention of the OFT Debt Collection Guidance 2.12 (g)). The client was understandably stressed and nervous as a result of these repeated claims from the debt collection agency. The CAB

commented that neither the bank nor the debt collection agency had taken into account that the client's disability effectively prevented him from working and that he would be unable from his current income to pay off the debts which he had incurred. In addition, the bank exacerbated the issue by passing on the case to the debt collection agency after the CAB had submitted several requests to them to write off the client's debts.

The new regime will also consider how guidance and rules will work together in a better way in which they do now.

We are concerned that the Government is considering not transferring the entire consumer protection regime currently contained in the Consumer Credit Act, particularly the unenforceability and unfair credit relationships provisions. We would point out that the right to private action for rule breaches under FSMA is unlikely to be taken up by the most vulnerable consumers, particularly given the Ministry of Justice's proposals to limit the scope of civil legal aid. In contrast, unenforceability, time orders and unfair credit relationships can be raised in the course of legal proceedings, e.g. for possession of goods or land, or to recover money. The court has wide powers including releasing the security, rewriting the agreement and liabilities. We believe that these rights should be included in any future regulatory regime for consumer credit.

Whilst the extension of rule-making powers to the consumer credit regulator would be welcome, we believe that it is important that lessons are learnt from the FSA's use of these powers. For example, when we raised concerns about the cost and effectiveness of payment protection insurance in our 2005 supercomplaint, it took a long time for the FSA to consult on more detailed rules to tackle the problems we identified. It is disappointing that these have not come into effect yet. Initially, the FSA were unwilling to admit that their rules were not working to protect consumers. The length of time it took the FSA to act has, in our view, allowed banks to continue to mis-sell payment protection insurance and to deny consumers the redress they deserved. Indeed, we are concerned that if the FSA lose the judicial review that the BBA have initiated on the PPI complaints handling policy statement, then the whole recent history of principle-based regulation will have proved to have failed to protect consumers.

Q8. The Government would welcome further evidence relating to:

- The use of consumer credit by small and medium sized firms
- Whether the protections currently afforded by the CCA are appropriate and cover the right groups of businesses; and
- The costs and benefits of considering extending FSMA-style conduct of business rules to a wider group of SMEs.

As Citizens Advice Bureaux do not generally provide advice to small businesses, we have little experience to share here. The only thing we would say is that it will be important for the new regulator to get the scope requirements right. We believe the FSA has been good at this.

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 agree that a rules-based regime could provide a more flexible and responsive regulatory regime than the current consumer credit regime, as long as it is sufficiently detailed and the regulator has ready access to evidence about consumer experience in the market and is prepared to act quickly on evidence of consumer detriment. We agree that it is difficult, costly and slow to amend primary legislation in the light of market developments and that it is more difficult to use primary legislation to respond swiftly to emerging practices. For example, if the OFT had had rule making powers, it could have quickly tackled the bad practices by firms providing credit by bills of sale.

However it is also difficult and costly for the FSA to amend its rules where these apply across a market and require detailed cost benefit analysis. Again we believe that there is a need for a power for very quick micro-intervention to deal with specific practices or firms and which may also fill the space between the rules and enforcement more effectively than it is at present. The current CCA requirements regime could provide the basis for this, if combined with a rule-making power to be more prescriptive and directive, if need be.

One of the strengths of the OFT regime is the relatively new power to impose requirements on individual firms to tackle their specific bad practices – a power that the FSA does not have. This is an important regulatory tool to tackle bad practice by firms. However, these requirements do not have the same positive force on the whole industry as rules. We therefore suggest that the Government look at giving the CPMA new rule-making powers which are linked to the requirement regime.

Another problem with a rules making regime is that it is likely to be ineffective in markets which are very diverse. The FSA struggled to tackle the irresponsible lending and harsh arrears practices exhibited by sub-prime lenders as MCOB assumed all lenders would be the same, and the rules regime made the FSA blind to problems arising in different segments of the mortgage market. Consumer credit is a very diverse market, with many different types of products, including payday loans, bills of sale, hire purchase and buy as you view, and not just credit cards and personal loans. The CPMA will need to undertake swift and surgical micro-interventions to tackle consumer detriment swiftly and effectively, or apply product regulation if there is a case to do so.

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 believe that the FSA's supervisory regime could ensure effective and appropriate consumer protection. They also have better intermediate sanctions than the OFT. It is vital the CPMA draws on the experience and expertise of current OFT staff when they take over regulation of consumer credit. The OFT know which companies are causing detriment and how.

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 the new regime.

We agree that the current regime where the OFT has responsibility for both consumer credit and general consumer protection, means that there is a coherent view of all aspects of a business providing the sale of goods and services on credit. It is vital that these protections are preserved. As the OFT is expected to be merged with the Competition Commission at around the same time, it is vital that the CPMA can also enforce breaches of the CPRs and Unfair Contract Terms legislation so as to provide a complete response to consumer problems. This will mean close working with Trading Standards Services (TSS). The CPMA will have to use these tools effectively – this means drawing on the experience of the OFT, and working with TSS.

We are concerned that the cuts to local government expenditure will inevitably mean cuts to TSS. If TSS are to be an important enforcer of the new consumer credit regime, which we believe they should be, it will be important that they are adequately funded. We would therefore ask the Government to consider whether some of the revenue from fees to the CPMA could be used to fund TSS to undertake consumer credit enforcement and supervision activities.

The CPMA should be under a duty to respond to complaints about features of the market harming the interests of consumers and effectively stop detriment and order compensation for consumers who have suffered loss. We believe that the Government should consider how equivalent provisions to the relevant parts of the Enterprise Act 2002 (including section 11) are introduced into the FSMA regime.

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 1)?

Not necessarily. As we have outlined above, we believe that it is not sufficient simply to transfer the consumer credit to a FSMA-style regime without making necessary changes to the regime to deal with the detriment and types of credit products, services and practices that are present in the current credit market.

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?

We believe that there are disadvantages of Option 1 that the Government has not identified in the paper:

- consumers will lose good regulation that has developed to tackle detriment in the market

- The Government will also lose the experience of regulation of consumer credit, which is very different from other financial services
- Important consumer rights would be lost.
- Consumer protection will be adversely affected if the transfer is not conducted effectively

Q14. Are there specific issues that you believe that the Government should consider in assessing the merits of Option1? How could these be addressed in the design of a new regime as proposed in Option 1?

Q15. If you do not agree with the Government's preferred Option 1, do you have 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 2?

We have highlighted in our general comments at the beginning of this section why we do not think either option identified by Government will work to effectively regulate the consumer credit market. We believe that it would be best to develop a hybrid FSMA-style regime to consumer credit, which takes the best of both FSA and OFT regimes and ensures no diminution in consumer protection and rights. In practice, this might be best delivered by retaining key provisions of the CCA (as amended), particularly provisions which give consumers individual rights and supplementing these with rules for firms.

Chapter 3: Achieving a proportionate and effective regulatory approach

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.

Overall, we believe that the provisions of a FSMA-style regime could lead to a more effective regulatory regime for consumer credit businesses:

The authorisation and threshold conditions are likely to be more robust under the FSMA regime, compared to the current OFT regime. This is welcome, as we believe low entry barriers to the consumer credit market have allowed many unscrupulous traders to exploit consumers over the years.

Fee arrangements – this could be based on a percentage of turnover of the firm. We believe that the CCA regime has had too much emphasis on taking small fees off a very large base of firms.

Systems and control requirements –These do not exist in the same way in the CCA regime. We believe these could provide better oversight of consumer credit firms.

Conduct of Business rules – as we have argued strongly throughout this response, these will need to be very specific to be at least as effective as the current CCA regime and preserve current consumer rights, and have the potential to prevent detriment.

Prudential requirements – There needs to be proper protection to ensure that firms cannot abuse consumers and then evade compensation simply by becoming insolvent or not having the money to pay awards. Therefore appropriate threshold conditions are necessary.

Reporting requirements – there are no reporting requirements currently in the CCA regime. We believe that a duty on firms to report key information can be an invaluable tool to help the regulator exercise oversight on the market. For example, the FSA has used information to great effect in the Mortgage Market Review. The consumer credit market is very diverse, with firms of all different sizes, and so reporting requirements would have to be proportionate, but we believe that this is a key tool.

Enforcement provisions – with the exception of the requirements regime, the FSA have much better enforcement powers compared to the OFT. They can impose unlimited fines (OFT can only charge £50,000 maximum) and can order firms to compensate affected consumers. This means that the FSA has more potential to provide firms with incentives to comply.

However, we would caution the CPMA to be wary of exempting small firms from these requirements – in our experience small credit firms come up with new products, often aimed at marginalized groups of people, which cause a great deal of consumer detriment.

Q17. Do you agree that statutory processes relating to 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 regulation under a FSMA-style regime?

Rule-making – Yes, as we have highlighted earlier in our response, we believe it is vital for the CPMA to have rule-making powers to tackle detriment as it arises.

Risk-based approach – We agree that the CPMA should take a risk-based approach to regulation. However, the OFT's approach to this has ignored the detriment caused by large firms, e.g. banks. In our experience, banks' practices cause significant and widespread detriment. There is some evidence that they cause proportionately more detriment than other sectors of the credit market, because of the numbers of consumers affected.

Differentiated fee-raising arrangements – We agree that this needs to happen. We have been calling for a better fee-regime for consumer credit licencing regime for a number of years. We do not think it is appropriate for large multi-national firms e.g. banks or credit card companies to pay the same as small home credit firms.

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

We believe that it would be appropriate for firms to be charged a percentage of their turnover. We would also ask that charitable organisations with altruistic aims providing debt advice free of charge should continue to be exempted from paying fees, but not from meeting appropriate standards. Care will need to be exercised here to ensure that charities that charge for certain services, e.g. insolvency practitioners, do not escape the fee regime, and to ensure that businesses who loss lead with a so-called free service are not exempted from regulation as a result.

Q19. The Government welcomes:

- Evidence relating to experiences of 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.

We do not have direct or detailed experience of the current appointed representatives regime. However, we note that the consultation proposes to apply this regime to credit brokerage activity designed to support the sale of goods. The Government will need to think about how an appointed representatives regime will work in the context of a credit market where many sales are effected via retail intermediaries. The CCD provides an exemption for these intermediaries where credit is ancillary to their main business and responsibility for sales practices lies with the creditor. However, the key problem is monitoring and compliance by these retailers. We believe there may be a key role here for Trading Standards Services (TSS) who are present on the ground to work with the CPMA to ensure good practice. The Government should consider how TSS might be properly resourced to do this – perhaps by receiving a proportion of the fee income for the new regime.

Q20. The Government welcomes:

- Evidence relating to experiences of the current group licencing regime, and
- Views on how the professional bodies regime might be adapted for different categories of consumer credit activities.

Citizens Advice holds a group consumer credit licence which covers all bureaux in England and Wales, allowing them to provide free debt advice. This means that individual bureaux do not have to apply for a licence themselves. We believe it is important that we are seen to be regulated, so that the public can have confidence that the debt advice we provide is of good quality.

We believe that group licencing or its equivalent needs to continue in the new regime. We note that the consultation proposes the use of the professional body regime could be used as an equivalent to the group licencing regime.   However, we strongly believe that the professional body regime should not be used to let firms indulging in high risk activity, e.g. commercial debt management firms and insolvency practitioners, from getting away with minimal or light touch regulation.

Alternatives to the professional body regime to replace group licencing could include a model based on the competent authorities/approved intermediaries for the debt relief order regime. Organisations can apply to the Insolvency Service to become competent authorities, who can then deal with applications from trained debt advisers to become authorised intermediaries. Another alternative would be to develop a system along the lines of the carve-out provisions in the Financial Promotions Order for charities providing free debt advice who can demonstrate that they meet relevant requirements.

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.

Citizens Advice Bureaux have considerable experience of using the commitments contained in self-regulatory codes of practice in relation to consumers. In our experience, the Lending Code is the only code which works relatively well for consumers, because the independent Lending Standards Board provides compliance monitoring. However, subscription remains on a voluntary basis and we are still seeing a considerable body of evidence that subscribers do not always comply with either the letter or the spirit of the Code, causing often considerable consumer detriment.

Other trade bodies have much less effective self-regulatory codes, which only contain the most basic commitments that all their members are willing to sign up to. Lack of regulation and enforcement powers against members are also a major concern.

Q22. Do you consider that there would be a case for deregulation of certain categories of consumer credit activity in the event of a transfer?

We strongly believe that there is no case whatsoever for deregulation of any category of consumer credit activity in the event of a transfer. There is a danger that if some categories of business are exempted, unscrupulous firms will simply design their business to avoid regulation. For example, paragraph 3.42 suggests that credit reference agencies might be exempted from regulation. Whilst we would agree that the services provided by credit reference agencies do not currently represent risk to consumers, we are concerned that unscrupulous businesses e.g. credit brokers or credit repair companies might claim that they are providing credit reference services to avoid regulation. Credit reference agencies also increasingly seem to be “cross-selling” premium services to consumers.

We are also concerned about the suggestion that deregulation could occur where there is effective parallel regulation or control via professional standards exists. We are not confident, for example, that the Charity Commission rules would provide sufficient specific safeguards for clients of free debt advice. Achieving charitable status gives no indication of the professionalism and quality of the service being provided in such a specialist area where clients of such services are likely to be especially vulnerable and to experience detriment if the service is inadequate or negligent.

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?

We do not have any further suggestions to make.

Chapter 4: Implementation and transitional arrangements

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

We believe that the whole regime has to apply from day one to all agreements. However, the Government may need to consider exactly how the transition between old and new rules will work. For example, see the FSA policy statement on PPI complaints where they drew upon similarities with the ICOB rules and the requirements of the previous voluntary regime. The Government should note the outcome of the PPI judicial review which may touch on this point.

Q25. The Government welcomes views on:

- How existing licencees could be dealt with; and
- Factors that should be considered in determining whether a modified approach could be adopted for particular categories of licenced firms.

We would point out that in determining its approach to transferring existing licencees over to the new regime, the Government needs to take into account the fact that many licencees in the current regime have not been subject to the competence checks introduced by the Consumer Credit Act 2006. We therefore believe that it would not necessarily be appropriate to "grandfather" these licencees into the new CPMA regime if distinct existing standards are to be applied. Firms who currently do not have FSA authorisation should meet appropriate threshold conditions.

An alternative method would be to use the same approach utilised in the regulation of sale and rent back companies, whereby there was a transitional period where a modified regulatory regime applied to sale and rent back firms to allow them time to adapt to the new regime. If they have not met the full requirements of the new regime by the end of the transitional period, they must cease to trade.

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

We believe that firms should simply pay the difference between the OFT fee regime and the fees required by the new CPMA regime.

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

Yes. We believe that the Government should not use reform of the regulatory system as an excuse to put off necessary reforms of consumer credit. It is too long to wait until 2014 for change to take place. In our recent report, *Cashing in,* we called on the Government to amend the Consumer Credit Act to close the loopholes in consumer credit legislation which allow loan finder firms to charge up-front fees and cold call consumers. We think that this change needs to happen quickly to limit consumer detriment.

Q28. The Government would welcome evidence on the experience of firms, consumers and their representatives in relation to similar previous transitions, for example, the extension of FSA jurisdiction to new markets since 2000.

We are unable to answer this question.

Civil Court Users Association

18th March 2011

Civil Court Users Association
11 Elm Court
Arden Street
Stratford-upon-Avon
Warwickshire
CV37 6PA

Financial Regulation Strategy
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Dear Sir / Madam,

<u>Civil Court Users Association: Response to 'A New Approach to Financial Regulation: Consultation on Reforming the Consumer Credit Regime'</u>

Please find enclosed a copy of the Civil Court Users Association s response to the above consultation.

Please do not hesitate to contact me if I may be of any further assistance.

Yours sincerely,

C. Havercroft

Claire Havercroft
Association Administrator

CC
UA

CIVIL COURT USERS ASSOCIATION

RESPONSE TO CONSULTATION

CC
UA

Subject:	A New Approach to Financial Regulation: Consultation on Reforming the Consumer Credit Regime
Closing Date:	22nd March 2011
Response Date:	16th March 2011
Representation:	The CCUA have corresponded with the Membership for the purpose of replying to this consultation. Our Members currently represent 85% of all claims issued in the County Courts in England and Wales.
Respond to:	Financial Regulation Strategy HM Treasury 1 Horse Guards Road London SW1A 2HQ Email: financial.reform@hmtreasury.gsi.gov.uk
CCUA Contacts:	Jeremy Chaplin, Chair Legal & Technical Committee Email: j.chaplin@gpbsolicitors.co.uk Claire Havercroft, Association Administrator Email: claireh@ccua.org.uk

Introduction to Response

The CCUA welcomes the opportunity to respond to the paper. The idea of creating a single organisation – (CPMA) – to create rules and regulate is clearly not without benefits. However, as the forward in the paper itself recognises, a reform "of this magnitude" will indeed have far reaching effects and will no doubt take some years to properly implement. As Court users, members of the CCUA are of course concerned as to the effects of the proposed reform upon enforcement action where consumers fail to meet their obligations to creditors. With this in mind the comments following are largely restricted to those concerns. However, many of our members will also be concerned to ensure that there is relative stability as regards any changes which may be required to their systems and processes, both when any changes are initially introduced and also on an ongoing basis.

Response

As has been stated the CCUA considers the paper from a predominantly creditor claimant point of view. The immediate concern is that the assessment of the consumer credit market is from a consumer perspective. If there is to be a new approach to financial regulation then is should facilitate the right outcomes for creditors as well as consumers. It is therefore considered that the paper is lacking in consideration for the creditor. There is no mention of problems created by unscrupulous debtors who abuse measures designed to protect the vulnerable. It is suggested that before any reform can be properly considered there needs to be a more extensive investigation and detailed report which is balanced as between creditor and consumer. The proposed policy objectives are in theory commendable but the CCUA have grave concerns about to how the objectives can be achieved and whether the outcome will be fair.

Option 1 proposes the repeal of the Consumer Credit Act 1974 (as amended by the Consumer Credit Act 2006) (CCA) and in its place there be a "Consumer Credit Rule Book" to be created by the CPMA. Whilst the paper states that the Government recognises the "significant challenge of designing a proportionate and effective regime under this option" the CCUA has grave concerns about a proposal to wipe away legislation that has become firmly established and workable over a period approaching four decades to be replaced by a "Rule Book", the status of which is unclear and the contents of which are totally unknown. Further, and importantly, the independence of the CCA will be lost and the CPMA will assume the role of rule maker, judge and executioner.

It is therefore the proposal to repeal the CCA that is perhaps of greatest concern to the CCUA and surprise and concern has been expressed about the lack of publication of such a radical and fundamental proposed change in legislation.

Conclusion

Having studied the paper, the CCUA have to conclude that Option 2 – Consumer Credit Continues to be Regulated Under the CCUA – must be the preferred option. It is quite impossible for Option 1 to be considered in any detail without any knowledge of the content of the "Rule Book" that is intended to replace this Act. Whilst the CCUA favour clarity and removal of unnecessary regulatory duplication, it cannot properly consider the proposals in this paper without more detail. The CCUA would therefore urge the Government to give wider consideration to the overall framework to include the creditor perspective and, if it is intended to repeal the CCA, set out a draft set of rules that can receive full and detailed consideration by all those who will be affected by them.

HM TREASURY

cdfa

A new approach to financial regulation: consultation on reforming the consumer credit regime
22nd March 2011

Community Development Finance Association response (FINAL v2)

The Community Development Finance Association (**cdfa**) is pleased respond to the HM Treasury consultation on reforming the consumer credit regime.

The **cdfa** is responding on behalf of its 68 members comprised of Community Development Finance Institutions (CDFIs). CDFIs are non-commercial social enterprises which deliver an appropriate financial service to those in greatest need. CDFIs serve three markets: Civil society; small- and micro-business; and personal/consumer, providing credit where access the finance has been denied by mainstream financial institutions.

Our response has been instructed via direct consultation with the membership.

1. Do you agree with this assessment of the consumer credit market?
A: Yes

2. 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?
A: The focus of the problems of split regulation are valid. However, the points of duplication, confusion, clarity and inefficiency are inherent in the variety of institutions that come under the wide scope of the CCA. The current differentiation in regulatory oversight mirrors the different activities of those firms which are overseen by FSMA and CCA, and makes sense in practice due to the inherently different nature of FSMA- versus CCA-regulated activities. Should the responsibilities be unified, care must be taken to avoid the potential for unintended consequences though indiscriminate application of the FSMA regime over CCA. The FSMA regime is structured to meet certain regulatory requirements – overseeing deposit-taking and other high-risk, high-impact activities – not all of which pertain to those functions undertaken by the CCA regime. There is no need for these rules to be applied to non-deposit taking institutions. FSA licensed vehicles by definition require greater regulatory burdens as they deal with consumers both on the depository and customer-based paradigm.

3. 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;

A: Consumers face great risk from certain elements of the current costumer credit market, in particular the high-cost, exploitative sub-prime market (payday and other short-term small sum and home credit lenders), where APRs are often in the hundreds of percent. Conversely, community development finance institutions (CDFIs) – non-profit social enterprises trading for charitable purpose – provide credit responsibly to those unable to access it from mainstream sources at an average APR of 30% for consumers and 15% for consumers borrowing for business purposes. It would be unfair and simplistic to include CDFIs in a single category along with commercial sub-prime retail credit providers, but should instead be categories in a “chartable/community/social” category with distinct assumptions and oversight procedures explicitly devised expressly for them.

CDFIs provide socially-driven sets of products, all of which are designed to benefit the consumer. Rates of credit for home credit providers and CDFIs appear below:

Cost per £100 lent					**APR**				
Home credit providers			*CDFIs*		Home credit providers			*CDFIs*	
Average	Range		*Average*	*Range*	Average	Range		*Average*	*Range*
£68	£59 - £75		*£17*	*£8 - £25*	231%	164% - 300%		*31%*	*14% - 44%*

With regards pricing in the high cost credit market, we can clearly see CDFIs provide a much fairer deal for finance.

- key provisions for consumer protection under the current regime and their effectiveness in securing appropriate outcomes for consumers; and

No comment

- the incidence of regulatory duplications or burdens on firms and/or inconsistent regulation of similar types of business.

A: The current system of the FSMA regime for certain activities and CCA for others does not confer undue burden and it is not necessarily unreasonable to maintain a distinction between the two.

4. Do you consider these objectives for reform of the consumer credit regime to be appropriate and attainable?
A: Lack of flexibility within the CCA regime, especially with regards to the need to alter legislation to realise simple bureaucratic change justifies a unified approach; however, moving the entirety of the regime to the jurisdiction of a new agency in and of itself is not necessarily justified in order to achieve this.

5. 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.
A: Although the premise of a unified regime may in principle confer theoretical benefits, the practicalities and consequences of doing so in this particular case are not necessarily founded and may not confer desirable benefits in reality. Transferring regulatory oversight of the credit market such that it is subsumed under a wider deposit-and-investment oversight regime as practiced currently by the FSA may bring about unwelcome and unnecessary stringency in approach and undue burdens in compliance. The rationale for doing so are, as yet, unsubstantiated.

6. The Government welcomes views on the role of institutions other than the OFT in the current consumer credit regime, and the benefits they may confer.
No comment.

7. 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.
A: Simply retaining the same level of protection does not justify the significant resourcing required to transfer duties.

8. The Government would welcome further evidence relating to:

- the use of consumer credit by small and medium sized enterprises (SMEs);

A: Evidence taken from **cdfa**'s annual member survey, *Inside Out 2010*, shows:

- 49 CDFIs hold a CC license; 45 of these have an average loan size of <£50k.
- Of these 45, total loans outstanding is 21,000 loans worth £79m; of these,
    - The personal loan portfolio is £7.6m (15,300 loans) and
    - The business and social enterprise lending portfolio £79m (21,000 loans)
- Consumer loans for enterprise purposes:
    - £71.3m outstanding (3100)
    - Approximately one-third of these were to unincorporated businesses (estimate)

- whether the protections currently afforded by the CCA are appropriate and cover the right groups of businesses; and

A: Maintaining the current regulations on agreements for business purposes of up to £25,000 for sole traders, small partnerships and other unincorporated bodies is prudent. However, care must be taken to prevent FSMA-style regimes dictating unnecessary attention; and so, for example, larger loans which are wholly or predominantly for business purposes should not be subject simply due to the fact that such scrutiny exists therein. FSMA regime should not be allowed to indiscriminately supplant tenets which have been deemed sensible and justified under CCA.

- the costs and benefits of considering extending FSMA-style conduct of business rules to a wider group of SMEs.

A: The benefits of capturing a wider pool of consumers under CCA enforced under a FSMA regime are unclear however the cost to those businesses not currently subject to CCA rules would be burdensome. Without requisite details, a cost benefit opinion is impossible here.

9. 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.
A: A rules-based rather than legislative regime should allow greater flexibility. It remains unclear why such a shift would also require oversight by another potentially more burdensome regime than the current agency.

10. The Government welcomes views on the impact a FSMA-style supervisory approach may have in terms of ensuring effective and appropriate consumer protection.
A: Although a risk based approach is acceptable in principle, care must be taken to apply it judiciously. Enhanced proportionality would confer a potential primary benefit of a graduated risk-based approach to supervision and intervention so long as the focus on regular reporting is kept within the same standard as currently required.

Doorstop lenders, payday loan companies and high cost credit providers such as Provident Financial do operate in higher risk markets with their activities more likely to cause consumer detriment. The government must be extremely careful to avoid applying this categorisation to social lenders such as CDFIs. Although operating at the high risk end of the market, the social and ethical goals of CDFIs place them in a distinct and separate category, one that should not be subject to measures directed at for-profit high risk lending.

Consumer detriment is not associated with CDFIs. CDFIs are beholden to their triple bottom line ethos, and **cdfa**-member CDFIs adhere to a Code of Practice which was devised by the **cdfa** in conjunction with the FSA. In fact, much of the motive for establishing a CDFI sector is to provide a marketplace for those excluded by mainstream financial service provision to go rather than resorting to for-profit, high-cost providers. CDFIs redress and reverse crippling debt cycles and help people pull themselves out of poverty.

It is, therefore, inappropriate to charge any or full CCL fees to CDFIs. A clear distinction between social lenders such as CDFIs and high cost for-profit lenders when assessing a risk-based approach to a fee structure is necessary.

11. 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.
No comment.

12. 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 1)?
A: Provided that the FSMA regime does not supersede the spirit of CCA approach.

13. 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?
A: Flexibility advantages must not be the only drive in a restructuring, which must also ensure that powers are not unnecessarily broadened to cover activities which are outside of the intended consequences.

14. Are there specific issues that you believe the Government should consider in assessing the merits of option 1? How could these be addressed in the design of a new regime as proposed in option 1?
A: Consider if the supposed benefits outweigh the cost of such a significant overhaul and ensure that unnecessary additional and burdensome requirements are not applied indiscriminately.

15. If you do not agree with the Government's preferred option 1, do you have 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 2?
No comment.

16. 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.
A: Applying FSMA-type provisions to different categories of consumer credit business would be acceptable provided that the provisions of the FSMA regime are applied to consider credit licensees based on CCA, not FSMA, requirements – for example, not requiring the additional material that would be required for a full FSA authorisation application requiring designation of the Approved Personal regime, and so forth.

17. Do you agree that statutory processes relating to 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 regulation under a FSMA-style regime?
A: Assigning differential fees based on consumer credit business type is fair and reasonable both between and within categories. Those conducting advisory or other such "low-risk" activities should, rightly, be subject to a different, lower-cost fee structure. Assignment of fees to providers of credit should also be based on clearly defined criteria such as those defined in the consultation document, e.g., business size and presumed regulatory burden.

With regards to social lending CDFIs, there is an argument that although social lenders certainly ought to be regulated, the cost of regulation should be reduced, perhaps partly subsidised by the other regulated entities. If the cost of being regulated by the FSA would be higher than OFT regulation, there is an argument that such is contrary to the public interest. It is in the interest of the public that regulation should be as cheap as possible to obtain and maintain for lawful providers. It is contrary for the public interest for the cost to dissuade providers from entering the market, or pursuing a path of compliance. It is particularly in the public interest that social lenders should be sheltered. Particularly in the current very difficult economic conditions, but also on principle.

18. The Government welcomes views on key factors that would need to be assessed in considering fee arrangements for consumer credit firms.
A: One criterion not cited in the consultation is the determination a fee structure based on the mission and of credit providers. Accepting that all providers of credit – even those which operate for bona fide charitable purpose and for social outcomes – should be subject to regulatory oversight, a clear and defensible argument can be made to exempt such businesses from paying a (full) fee, with relatively negligible incremental adjustment in the fee structure of commercial business offsetting waived or greatly reduced fees. Charitable-purpose/social providers of credit – CDFIs – put their customers first and foremost and are therefore low-risk businesses with regards to the potential for bureaucratic resource burden that any regulator might bear due to degree and amount of involvement from adjudicating consumer protection rules. A categorisation process would be simple to design and easily executed. An initial screening process whereby membership in the **cdfa** (which requires demonstration of a commitment to community and economic development within disadvantaged communities or within markets that are not adequately served by mainstream financial service providers, and complying with a Code of Practice) could serve as a pre-condition, alongside demonstration of social value evidenced by the Memorandum of Association. A proportionate approach requiring an even lesser degree of scrutiny, given that most CDFIs are not deposit takers, is in order.

The structure of Consumer Credit Licensing (CCL) fees needs to be revised to apply a provision of exemption to social providers of finance. Whilst Credit Unions are exempt from paying CCL fees, CDFIs, operating under the same remit as Credit Unions, must pay the full CCL fee.

CDFIs deliver against a 'triple bottom line' of greater economic growth, social cohesion and sustainable development, screening responsible lending decisions by larger societal interests and impacts rather than by profit.

The fee paying structure should be revised such that either:
- **cdfa**-member CDFIs are exempt under the same rules as are Credit Union, or
- A Set of Principles sets parameters which would enable individual CDFIs to qualify for a fee exemption or reduction

These principles could easily be designed based on legal status the business trades by, such as:
- Registered charity - bound to be social, clearly in the public interest

- Community Interest Company - bound to be social, clearly in the public interest
- Ben-Com/Co-operative/IPS - very likely to be social and in the public interest
- Friendly Society/ Mutual - very likely to be social and in the public interest
- Company limited by guarantee - strong argument because a CLG is normally set up so it cannot distribute its profits or assets to its members. In other words, it should qualify if the CLG includes the lock on distribution of profits and assets.

19. The Government welcomes: evidence relating to experiences of 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 comment

20. 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.
No comment

21. 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.
No comment

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.
A: Deregulation of those activities which are low/no-risk to consumers, are redundant and or would pose no impact on economic stability could, arguably, benefit from deregulation. Drawing distinctions between diffident forms of credit with regards to business mission, namely creating different rules for non-profit CDFIs, should be included in the scope for deregulation.

23. 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 comment

24. The Government welcomes views on how the treatment of agreements already in existence could be approached.
A: Care must be taken to ensure that no unintended consequences result from any transition.

25. 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.
No comment

26. The Government welcomes views on key factors that would need to be considered in transitioning from the current to a new fee structure.
No comment

27. Are there other factors the Government should take account of in considering transitional arrangements?
No comment

28. The Government would welcome evidence on the experience 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 comment

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Financial Regulation Strategy
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

21 March 2011

Dear Sir/Madam

Reforming the consumer credit regime

The Consumer Council is an independent consumer organisation, working to bring about change to benefit Northern Ireland's (NI) consumers. Our aim is to make the consumer voice heard and make it count. We represent consumers in the areas of transport, water and energy. We also have responsibility to educate consumers on their rights and responsibilities and to equip them with the skills they need to make good decisions about their money and manage it wisely.

We have been working with Government and other stakeholders including banks and building societies to ensure financial services and products are suitable for consumers. Through partnership, we drive change and ensure that consumers are at the centre of policies and decisions.

Main principles to protect consumers

We have previously outlined our policy positions on regulation and how it protects consumers to the Treasury.

The Consumer Council recommends four main principles to be taken into consideration to protect the interests of consumers throughout financial regulation reform.

1. **Clarity for consumers:**

The Banking Code outlined the rights and responsibilities of both consumers and banks and building societies. It has since been disbanded and replaced by the Banking Conduct of Business Sourcebook (BCOBS) and the Lending Code. The Consumer Council would like to see clarity for consumers restored in the new regulatory framework with the provision of a charter that clearly outlines the responsibilities of both consumers and financial institutions. Customer facing aspects of regulation should be consistent, granting consumers the same rights whether they complain about elements of products such as an overdraft or a savings account.

The Consumer Council has previously highlighted the potential problems of a dual approach in the regulation of personal current accounts. In doing so, it would be appropriate for one body to oversee all regulation relating to both current accounts (which often also have overdraft facilities) and all other lending products. It is our view that splitting the role between two regulators is not conducive to effective regulation.

Option one on this consultation paper covers bringing the regulation for all retail financial services under one regulatory regime. This would enable the CPMA (Consumer Protection and Markets Authority) (to be called the Financial Conduct Authority - FCA) to take a stronger market oversight role. It has been summarised as an opportunity to improve the way consumer credit is regulated and to create a simpler, more responsive regime. In the interest of consumers, we therefore agree with taking this option forward.

For some consumers, there is a temptation to apply for payday loans, bill of sale lending or accept doorstep selling of loans, as no credit check is required and cash can often be received immediately. Regulation needs to be clear in order to protect vulnerable consumers. We believe there is a need for providers to highlight and make sure that consumers understand the risks and high interest rates and charges for these products.

The Consumer Council also believes that the use of bills of sale for consumer lending should be banned. The complexity of the product means consumers may not be aware of or fully understand the terms of the product, risks and costs involved.

Government must also take the lead on tackling illegal money lenders. Illegal lending offers no protection to consumers and it is often the most vulnerable that depend on sourcing credit in this way.

2. A robust and flexible system:

The system must be robust and flexible enough to respond urgently in identifying and taking necessary and appropriate action regarding financial products or behaviours that will cause customer detriment. The CPMA (to be called the Financial Conduct Authority) must ensure that the interests of consumers are placed at the heart of the conduct regulatory system and given the appropriate degree of priority.

Part of the Office of Fair Trading's (OFT) broader mission is currently to ensure that markets are fair and competitive. In 2004 the Consumer Council and Which? took a super-complaint to the OFT against the personal current account market (PCA) in Northern Ireland because we felt consumers were not getting a fair deal. The case was referred to the Competition Commission for an investigation which concluded that bank customers in Northern Ireland were not being offered competitive PCAs and that the banks would have to change. As a result, a number of remedies were developed and continue to be implemented by the banks.

We seek assurance that the new CPMA will have the market oversight to be able to identify, investigate and deal with practices that are anti- competitive and anti consumer, strengthening protection for consumers.

The new regulator should maintain in close contact with the Consumer Council and the Trading Standards Service in Northern Ireland in order to be able to take account of local developments and problems. It is also important to retain the knowledge and skills of front line Consumerline helpline staff and making sure this is maintained or transferred to continue to protect consumers.

3. Frequent reviews of the system:

Proper mechanisms must be put in place to review the regulation system and to take into account the views of consumers gathered by consumer representatives on a frequent basis. We have carried out research that shows that consumers want to be involved in decisions and make their voice heard. For example, some consumers feel powerless in the face of big business and suspect that their views are not taken into account. The Consumer Council is willing to work closely with the Treasury to make sure that the views of consumers in Northern Ireland are represented and have an impact each time the regulatory system is reviewed.

4. Consumer education and redress:

The role of the new CPMA (to be called the Financial Conduct Authority) should be to protect consumers in both a preventative and restorative manner. This should be in the form of credible enforcement of an appropriate set of conduct rules and the safety net of an ombudsman and compensation scheme to allow effective redress.

We welcome the establishment of the UK's first free financial advice service and annual financial health check to be set up by the Consumer Financial Education Body (CFEB). It is vital that CFEB continue the approach of working in partnership with organisations such as the Consumer Council in Northern Ireland to ensure there is a joined up approach and there are consistent messages on financial capability.

Appropriate mechanisms are needed to place Northern Ireland credit unions on an equal footing with those in Great Britain. This is to protect members by ensuring that they are included in the Financial Compensation Services Scheme and have access to the Financial Ombudsman Service should they wish to seek redress.

Transitional arrangements

Consumers with existing credit agreements need to continue to be protected during the transition period. It is important that existing arrangements including the voluntary codes are joined up, flexible enough to allow for changes and efficient to run. Regulators should be able to deal with rapid resolution flexibly to respond to market developments.

Further consultation with the Consumer Council

We look forward to working with the Treasury and reviewing more detailed proposals, including the draft legislation. We hope you will find this information useful. If we can provide you with any further information please do not hesitate to contact

yours sincerely,

J. McCurley

JULIE MCCURLEY
Head of Money Affairs

CONSUMER CREDIT Counselling Service

A Registered Charity

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 assesment 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 hat 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 comment**s**

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

HM Treasury/BIS Department for Business Innovation & Skills

A new approach to financial regulation: Consultation on reforming the consumer credit regime

RESPONSE OF THE CONSUMER CREDIT TRADE ASSOCIATION

22 March 2011

Introduction

The Consumer Credit Trade Association (CCTA) was established in 1891, and for 120 years we have played a vital role in the continued success of the credit industry.

We pride ourselves on having a strongly independent voice, which we are more than happy to use on behalf of our members. Our reputation for lobbying government, and our involvement with legislation change in both the UK and EU, is well known and respected.

We have a wealth of experience, combined with the „down-to-earth" commonsense that comes from years in the industry. We have that rare mix of old and new that does not stand still, but embraces the best of past and present so that we can serve our Members and the wider industry well.

Our primary concern is ensuring that regulatory reforms that look fine on paper, actually work in the real world

We believe that the CCTA amongst all Trade Associations, represents SMEs as the vast majorly of our Members fit into that category. We have just under 300 Members that cover all types of credit grantors including:-

Unsecured and Secured Loans;
Retail Lenders;
Banks;
Mortgage Lenders;
Motor Finance;
Credit Brokers;
Home Credit;
Pay Day Lenders;
Log Book Loans.

The CCTA, like other Trade Associations also has ancillary services Members that make up the overall membership.

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Consultation response from Consumer Credit Trade Association (CCTA) on "a new approach to financial regulation: consultation on reforming the consumer credit regime"

Overview

The CCTA is pleased to submit a response to the recent consultation on "a new approach to financial regulation: consultation on reforming the consumer credit regime." We understand and are concerned that the Governments preferred option is Option 1 which is based on the Financial Services & Markets Acts [FSMA] 2000, that could see all companies involved in the credit industry, large and small, operating under FSA styled "rule" based regulation. Consumer credit has undergone root and branch changes over the last 35 years culminating in the latest piece of regulation, the Consumer Credit Directive implemented in February of this year. We believe that the current regulator of consumer credit, the Office of Fair Trading [OFT] has been provided with the appropriate tools of regulation and enforcement which means that they have more than adequate means of controlling the market, in a proportionate and appropriate way whilst taking action against any „rogue traders" within the market. The consultation paper proposes the transfer of the OFT to operate under the Financial Conduct Authority, alongside the FSA. We fail to see why a successful model for regulating consumer credit is potentially once again facing further major change thereby creating concerns for the Industry and consumer alike.

The consultation paper goes much further than the transfer, as it proposes to apply to the consumer credit market the FSA"s current approach in the retail deposit market. Without a more proportionate approach this is unlikely to work, because of the fundamental difference between credit [where the risk lies with the lender] and banking/saving [where the main risk lies with the depositor]. Needless to say, compliance costs will increase significantly, and supervision will intervene far more under the new regulator.

We do not feel that the consultation document, or the impact assessment, presents any compelling evidence to move to a FSMA style regime for businesses currently wholly regulated by the OFT, especially those that are considered to be SMEs. We feel that many unintended consequence could arise as a result of the change. Increased costs and regulation could force some smaller organisations, or sole traders to exit the market.

The provision of consumer credit has risen considerably in recent decades and enabled consumers to access products and services to suit their lifestyles. As a direct result of the negative impact of "credit crunch", bank funding to the SME sector in particular has been severely curtained, resulting in a significant downturn in lending. Consumer credit has hugely contributed to the positive growth of the UK economy over the last twenty years, within a highly competitive and innovative market. The cessation of many credit products is currently stifling growth, and further regulation, or even uncertainty about regulation going forward will stifle such needed growth even more.

Used wisely, consumer credit also helps consumers to smooth the peaks and troughs in income and expenditure, and allows consumer to manage their finances in a way that suits them.

Statistics published by Business Innovation & Skills [BIS] in October 2010 (http://.stats.bis.gov.uk show that the SME‟s together accounted for 99.9% of all enterprises, 59.8% of private sector employment and 49.0% of private sector turnover. Both the number of companies and the number of sole proprietorships rose, the former for the 11th successive year, the latter for the seventh successive year. Small enterprises alone, with 1 to 49 employees, accounted for 48.2% of employment and 37.5% of turnover. Addressing the consumer credit SME‟s, paragraph 3.1 of the consultation paper suggests that just over one-third of OFT licensed firms are sole traders.

The proposed new regime will be the most radical change in consumer credit regulation for a generation. We believe that the massive changes that consumer credit has gone through in 1974, 2006 and recently with the implementation of the Consumer Credit Directive should not be changed again to fit FSMA 2000. Moreover, we believe that it would create havoc in the consumer credit market, to effect a change from regulation which provides for clear legal certainty, to a principles and rules based approach such as the FSA.

The standards expected by firms in the framework of the UK regulatory regime for consumer credit are some of the highest in Europe and the burden on SME‟s in ensuring compliance is a large one. Banks, building societies and large finance houses have larger staffing levels and financial resources to cope with more onerous regulations for deposit takers where the risks are greater. For the SME‟s simply keeping up with the required change is expensive, as detailed regulations can be supplanted by guidance notes and additional actions are required when dealing with other Government agencies.

The changes currently outlined within the consultation paper, would be the most complicated and costly change for all parties. Large numbers of small businesses could be expected to leave the market [over 33% of current credit licensees are sole traders]. Many other lenders would in all probability withdraw from at least part of their current markets. In consequence, the UK‟s consumer credit markets would shrink considerably, credit availability would be restricted and market competition significantly reduced. There would be an increase in the costs of borrowing as companies would have to pass on the higher cost of regulation under the new regime. The effects would almost certainly exceed those of the recent credit crunch, where availability and choice of products reduced dramatically. The low-income borrowers in particular would be most affected, with the real danger of financial exclusion becoming far greater.

As you are no doubt aware around 40% of all consumer lending is currently done by companies which are not banks. Within the body of the consultation paper is the proposal that capital adequacy requirements would be imposed on all lenders, which would impact on organisations that do not take, or use deposits to fund lending. Similarly, much of the current consumer market lending is dependent on intermediaries. Making lenders responsible for the regulatory compliance of intermediaries would have a serious adverse effect on markets such as motor finance.

Our main areas of concern are:

- further unwarranted changes to consumer credit regulation
- the extension of the new regime to small business lending
- a requirement for all existing lenders to re-apply for authorisation for both existing and past business
- significantly higher regulatory fees
- the loss of the certainty of the legal position on loan agreements
- further disruption to business during the handover and changes
- lack of experience on consumer credit in the new Authority
- potential loss of Trading Standards Authority experience

Consumer protection within consumer credit has been strengthened over the years and with the implementation of European Consumer Credit Directive, and the move towards maximum harmonisation consumers are even more protected. The level of complaints dealt with by the regulator, or the Financial Ombudsman Service [FOS] are minute in comparison to the number of loan agreements written. Companies are concerned about their reputation, and treat consumers with respect and dignity. The risk lies with the lender not the consumer, as no deposits are taken by the lenders outside of the banks, large finance houses and building societies. We believe that there is no compelling reason to move towards monitoring and reporting as consumers are already well protected.

The Coalition Government are continually stating their declared policy that enterprise and the SMEs are pivotal in the UK economy avoiding the real danger of a double dip recession. The Prime Minister has also stated that bureaucracy and regulatory red tape are the enemies of enterprise and that unnecessary regulation should be avoided at all costs. We have already stated that we believe that the changes that consumer credit has gone through in 1974, 2006 and now the implementation of the Consumer Credit Directive in February 2011 should not be changed yet again to fit FSMA 2000.

We believe therefore that Option 2 is the best option and that consumer credit should remain under the current regulatory framework and body, preferably an OFT style that would allow the market to retain the legal certainty of the current regulation with appropriate and proportionate enforcement.

Since 2003 there has been major change within consumer credit regulation with the introduction of new secondary legislation in 2004/5 on consumer credit advertising, early settlement and disclosure requirements for consumer credit agreements.

The 2006 Consumer Credit Act introduced new requirements for post contractual transparency [notices of sums in arrears, annual statements, and the requirement to inform consumers promptly of the application of default sums to their account]. This Act also introduced new powers for OFT, particularly in relation to licensing.

The implementation into the UK of the EU Consumer Credit Directive in February 2011 – delayed from June 2010 – has resulted in further reform, with, in some cases, regulations introduced as recently as 2004 and 2005 being repeated or changed significantly. Although the consultation recognises that reform will have to encompass EU requirements, there is no detailed analysis of what this might mean, or how this might be achieved. This presents some confusion, as the provisions of the EU Consumer Credit Directive will need to be adhered to.

The Office of Fair Trading has always had competing priorities as its responsibilities in relation to "making markets work well for consumers", and as a consumer credit regulator often conflict. In particular, it is difficult for OFT to be an impartial and independent regulator with this dual role. In the consultation published on 17 February, it is proposed that the new Financial Conduct Authority (FCA) will have a strong competition aspect to its role. In our view, this will simply repeat the conflict of interest faced by OFT. Clive Maxwell‟s speech from 11 February 2011 raised some interesting points re the interaction of financial regulation and competition and consumer policy. Mr Maxwell made the point that financial markets contribute productivity and growth to the economy. The data above shows the contribution of SMEs overall. Mr Maxwell also makes the point that "….rules to protect consumers or impose financial stability introduced without giving thought to competition can lead to unnecessary barriers to entry." This would be undesirable in encouraging growth of SMEs in consumer credit.

Response to Consultation Questions.

Chapter 1

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

Yes. We would also add that many consumer credit providers are SMEs, notably in the non standard market, the presence of these many businesses helps to provide both competition and choice for consumers. When many of the mainstream banks re-trenched on their lending, SMEs continued to lend responsibly. They were able to do this for a number of reasons.

- Those engaged in face to face lending have developed thorough and appropriate "know your customer" policies
- Often amounts lent are relatively small and not over extended terms, this can include, for example, payday loans, home credit, pawn broking and fire purchase on used vehicles
- SMEs are keen to give excellent customer service, and provide services that their customers want, as a differentiator to larger businesses
- SMEs can, in many cases, react more quickly by having less cumbersome chains of command and approval for actions

2. 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?

No, it is not a fair assessment. The current split in responsibility for consumer credit and other retail financial services does cause some difficulties in relation to dual regulation and larger businesses, however for SMEs that fall wholly under the CCTA regime this is much less of an issue.

We do not believe there is consumer based evidence supporting a view that there are problems caused by the way in which consumer credit is currently regulated as many of the previously perceived "barriers" to consumers obtaining redress have been removed by the introduction of, for example Debt Relief Orders, the voluntary "breathing space" commitment and the Consumer Credit jurisdiction under FOS. It would be difficult in our view, to set priorities across the whole retail financial services sector as each type of credit has specific characteristics and services differing customer demographics.

Key differences between CCA and FSMA regimes are appropriate given the small size and nature of many CCA regulated businesses. For example regular reporting would place a very great burden on SMEs. A more complex license/authorisation application would deter SME entrants which would, in turn, lead to reduced competition and increased market concentration. Some matters considered by the FSMA such as "whether there are sufficient capital reserves" is way in excess of what is sensible to ask of a sole trader, or small business, unless the threshold is set at a level that in practice has little effect.

Problems may have been identified with the dual routine, but the solution is not simply to press ahead with a single "one size fits all" style of regulation. There can still be accountability, coherence, a lack of duplication and confusion and a flexible regime by implementing appropriate frameworks under a single authority.

We do not agree that the current CCA regime is a deterrent to effective de-regulation. Since 2003 there have been many opportunities to de-regulate which have not been taking due to a misplaced belief that consumers need more protection, not less. The 2008 Consumer Credit Act was a prime opportunity to de-regulate some primary legislation, for example.

On the other side, the regime is sufficiently flexible to allow the Competition Commission to insert new requirements on home credit businesses fairly quickly after its final inquiry report was issued in 2006. The 2004 Consumer Credit (Advertisements) Regulations have been repealed and replaced by a 2010 set of Advertisements Regulations covering the CCD requirements..

As the Government is committed to full consultation, we do not see how rules could be changed much more quickly. Furthermore, businesses need time to implement changes. It seems to us to make more sense to press ahead with the current methods, whereby the details are developed during discussion and consultation for implementation at some future date, as this increases regulatory certainty and allows for a sensible and achievable transitioning period.

If there are 96,000 businesses regulated by OFT (which will include businesses not directly engaged in consumer credit lending) at an estimated annual regulatory burden on businesses and consumers of £235m per year, this is almost £2,500 per business. Larger businesses will have more consumers over which to effectively "spread the cost". For a small business or a sole trader, this represents a large overhead.

3. 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.
- The incidence of regulatory duplications or burdens on firms and/or inconsistent regulation of similar types of business

We do feel that there are inconsistencies as commercial businesses are subject to the CCA regime whilst third sector lenders are afforded a "light touch" under the current

FSMA regime. We believe that consumers should be afforded the same level of protections under consumer credit irrespective of where they borrow from.

Key provisions for consumer protection under the current regime are that the consumer:

- Knows how much he is borrowing and what it will cost in total, and in each regular payment
- Knows what will happen if repayments are missed, and how to put this right
- Knows how to complain if things go wrong
- Is able to settle the agreement early either in full or in part and receive an interest rebate if applicable
- Has a 14 day right of withdrawal after the making of the agreement
- Cannot waive their right to receive "adequate explanations" of the key feature of the agreement and receives pre-contractual information before the agreement is made containing details of the agreement
- Receives detailed information post contract to inform him of the state of his account

Evidence from the Financial Ombudsman Service annual report March 2010 finds that

- Of the 163,012 new cases received, 71,700 or 44% were classed as "banking and credit".
- 35% of "banking and credit" complaints were about current accounts. 10.5% were about mortgages, and 7% about savings accounts
- New cases involving current accounts (15.5% overall) and credit cards (11%) represented much higher proportions than new cases related to unsecured loans (4%), or consumer credit products and services (4%), or consumer credit products and services.
- Of the 11 published categories in "consumer credit products and services", none had more than 1,735 new cases ("point of sale loans") and 50% of new cases in this category related to point of sale loans and hire purchase. Home credit complaints numbered 41, while debt counselling complaints numbered 163.

The low numbers of complaints for CCA regulated business types suggest there are adequate consumer protections in place.

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

In our view these four objectives can be achieved under the existing regime. What is needed here is for these objectives to be practically applied. For SMEs, a broader range of enforcement powers would introduce some apprehension as the tools available to the OFT seem adequate – and have been strengthened in recent years.

As we noted earlier, there have been opportunities to deregulate over the past few years, and there has been much input by lenders and their trade associations to working groups formed to discuss both the CCA 2006 and the CCD. However, these opportunities were largely shied away from by policy makers. Consumers have to take responsibility for what they borrow, having been given adequate information to be able to make an informed decision. Consumers are already adequately protected under the existing regime and the new requirements introduced by the CCD will only increase transparency of information.

Chapter 2

5. 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.

SMEs would have very great concerns about any repeat of the CCA believing it would have a huge impact on their business in terms of, for example, cost, new documentation systems and training. Since 2005 they have been required to make major changes to their systems and documentation in order to be compliant. We support full compliance, however a potentially much greater change of regime could cause market withdrawals, leading to loss of choice for consumers and potential job losses from businesses such as theirs.

The Government must consider the relevance of its proposals to SMEs. Most of the points raised in paragraph 2.6 relate to businesses having current dual regulation. In terms of improving market oversight. It should be feasible for those having sectoral responsibility to come together to discuss key issues in the markets. We feel that the proposals here have little relevance to an SME business engaged in wholly unsecured consumer credit lending, or vehicle finance and leasing or alternative types of credit – although we acknowledge that for lenders active in both secured and unsecured lending, or deposit takers offering overdrafts there is a relevance.

The official scope of the CCD was unsecured agreements of between Eu200 and Eu75,000. Outside the scope of the CCD are :

- Credit agreements secured on land
- Hiring or leasing agreements where an obligation to purchase the object is not laid down either by the agreements, or by any separate agreement
- Credit agreements which relate to the deferred payment, free of charge, of an existing debt
- Pawn Broking agreements.
- Third sector lender type agreements

Immediately it is apparent that, should the CCD regime be restricted only to those agreements within the original scope, that difficulties will arise, as pawnbroking and hire purchase are currently included under the CCA regime.

6. The Government welcomes view on the role of institutions other than the OFT in the current consumer regime, and the benefits they may confer.

Our view here is that whoever is involved in the current, and indeed future, regime, they they should have a thorough understanding of the market and consumers based on available evidence, not perception and pre-conceived ideas, and be willing to engage with lenders to develop appropriate and proportionate outcomes for both consumers and lenders. There seems to us no particular reason why the CCA regime be maintained, even if it was not under the supervision of the OFT.

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

Paragraph 2.11 notes that because of the CCD there would be limited scope for amending requirements relating to many types of credit agreements. We do not believe consumer protection needs enhancing (particularly following the implementation of CCD requirements) and believe that the CCD should be given time to "bed in" before any evaluation is made.

8. 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
- The costs and benefits of considering extending FSMA-style conduct of business rules to a wider group of SMEs.

The question relates to SMEs as users of credit rather than as providers of credit. Currently the CCA regime allows protection for unsecured lending up to £25,000 for SMEs styled as sole traders, small partnerships and unincorporated bodies. We have assumed that second charge mortgages will no longer be covered under the CCA regime following the announcement that regulation of these products will transfer to the FSA/FCA.

Where businesses borrow as individuals (or their structure means that each individual is liable for the debts of other individuals, for example partnerships) then the CCA regime would seem to be adequate as "consumer credit" should be distinguishable from "longer term business financing".

According to figures published by the Finance and Leasing Association on 22 February 2011 over one thousand small businesses obtain asset finance every day. As well as much larger cost items such as commercial vehicles and plant and machinery, the figures show that small businesses also used asset finance to purchase business equipment, cars and IT equipment. Some of this finance will be under the consumer credit regime.

9. 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 believe that both consumers and consumer credit firms would find such a regime confusing and that this would be particularly difficult for SMEs who have limited resources to keep scanning for changes. The current CCA regime is portrayed as a bit of a dinosaur, but in fact changes to secondary legislation (which contains most of the detailed rules) can be made quickly and there is ample evidence of this being done to correct errors Businesses cannot change their systems overnight so there will always have to be some implementation period for changes – or a withdrawal of lending completely.

More flexible regimes may increase the likelihood of consumers making frivolous and vexatious complaints. We believe that the administrative burdens arising (more frequent staff training, system changes, process changes) at the practical level have not been properly considered Annex B of the consultation considers some of the high level differences between the regimes. If a "one size fits all" approach were adopted under an FSMA style regime we believe this would cause many SMEs to leave the market. Increased flexibility brings with it increased regulatory uncertainty. SMEs in particular do not have time to "second guess" the "mindset of the regulator" and so appreciate the CCA framework.

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

In our view the ideas set out in paragraph 2.17 and 2.18 would be excessive if applied to SMEs and again shows the focus of the consultation to be on much larger businesses. We feel that there is a risk that inappropriate conclusions could be drawn if individual markets are not properly understood – note here that the OFT‟s High Cost Credit review took place between June 2009 – June 2010 and there was little substantive evidence in the review of a real understanding of each of the markets covered. Consumers pawning an item worth £80 have a different set of needs than high net worth individuals seeking to be involved in complex financial investment products.

11. The Government welcomes views on the synergies afforded by the current regime in tacking 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.

To its credit, the OFT has done a lot of work in educating consumers about their rights relating to the sale of goods and services on credit. Level of consumer understanding is often cited as a barrier to effective markets and we feel that making significant changes would be confusing for consumers.

12. Do you agree that transferring consumer credit regulation to an FSMA-style regime to sit alongside other retail financial services regulations under the CPMA would support the Government's objectives?

No. We feel that these objectives could be achieved within the existing regime and it is not the regime, but the approach to the regime, that causes some of the issues identified. If consumer groups are calling for increased consumer protection under the detail of the CCA then it is unlikely that the more flexible FSMA regime would provide the protections required. The Government has already demonstrated that the process of regulatory approval can be quick when it needs to9 be so, as evidenced by the passage of the Consumer Credit Act 2006. The consultation acknowledges in paragraph 2.25 that costs may be incurred by firms not already authorised by the FSA. The publication of this consultation has made us apprehensive about the future. of many SMEs who are CCTA Members and whether they will be able to operate because of the cost of regulation.

13. 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?

We list below a number of points we believe are relevant.

- If market oversight is to be achieved by regular reporting, the reporting requirements are likely to be too detailed for SME businesses to fully complete
- Much consumer credit lending s now done on-line. Therefore market oversight is less localised and can still be achieved under the CCA regime (option2)
- Unintended consequences of regulation are often identified by industry/trade associations at an early stage of discussions with BIS/OFT. Most of these arise from errors in secondary legislation, which can be changed relatively easily if the desire to change is there.
- Existing consumer protections have recently been strengthened with the introduction of the CCD requirements and there has been no evidence presented by the consultation to support a view that protections need strengthening.
- Opportunities for de-regulation have been overlooked during recent changes to credit legislation where, for example, primary legislation has been amended. This suggests that appetite for de-regulation is not driven by the regime but by the views of policy makers and consumer groups

- The FSMA regime is disproportionate for SMEs in many areas, for example regular reporting "prohibiting individuals from working in financial services"
- Businesses have spent much time and money implementing the requirements of the new CCD legislation, particularly with regard to systems and documentation design and training. This would be considered "wasted spend" if the regime were to change significantly for some businesses at some point in the next few years.
- Costs that are imposed on businesses, such as those incurred in adopting a completely new regime, will be passed onto customers, thus increasing the price of credit.

14. Are there specific issues that you believe the Government should consider in assessing the merits of option 1? How could these be addressed in the design of a new regime as proposed in option 1?

- The objectives themselves do not provide any live examples, eg when de-regulation has recently been inhibited by the CCA regime.
- The high level principles for business under the FSMA regime are not significantly different from the OFT‟s general principles of fair business practice as outlined in the OFT‟s Irresponsible Lending Guidance for credits (OFT 1107), therefore we do not believe a compelling case for change has been made
- The detailed requirements set out by OFT in its various sets of Guidance can be helpful for SMEs in providing a framework in which practical examples are set out
- The detail is still very sketchy as it relates to SMEs. For example

- Many SMEs, sole traders, are not online and so might find it difficult to become aware of changes to the rulebook
- Complex applications would deter new market entrants
- SMEs are unlikely to have ongoing and close relationships with the regulator – under an FSMA style regime we do not believe that visits to SME – particularly smaller ones – will take place with any frequency or regularity
- We consider that, for SMEs, the range of sanctions available under the current regime are plenty adequate enough, for example imposition of a £50,000 fine would put many SMEs out of business.

15. If you do not agree with the Government's preferred option 1, do you have 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 2?

Points are already made within the response.

Chapter 3

16. The Government welcomes views on the suitability of the provisions of a FSMA-style regime to different categories of consumer credit business.

We cannot see any compelling evidence presented in the consultation to justify moving to an FSMA style regime. Chapter 3 discusses proportionality, yet it is clear that the detail of such a regime has not been thought through (paragraph3.3) and would be subject in any event to EU constraints – as the consultation notes. Where the regimes currently have similarities, again we do not find any compelling evidence for change and see this as "change for change‟s sake", as it seems to us that more of the change burden would fall on SMEs than on much larger businesses – with those SMEs being less able to cope, or have available resource, than larger businesses. These proposals are likely to increase, rather than reduce, financial exclusion.

The proposals put forward (notably in paragraph 3.8) would in our view be difficult for some SMEs – particularly sole trader businesses to meet.

17. Do you agree that statutory processes relating to 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 taking to consumer credit regulation under a FSMA-style regime?

We do not see these as the key issues of proportionality. SMEs in particular will struggle to find the resources necessary to read and understand the voluminous material currently coming out of the FSA in its consultation and discussion papers, some of these run to hundreds of pages. This dissuades SMEs from fully and actively engaging in change discussions.

The adapted risk based supervisory approach outlined in paragraph 3.16 appears to us to contain similar actions to the OFT‟s current regime, with the added burden of regular regulatory reporting. Thematic reviews appear similar to OFT market studies and the general process appears to follow a similar path. Therefore again we can see no compelling reason for change and paragraph 3.17 seems to assume that small firms will be required to submit regulatory returns which imposes a new burden on the majority of SMEs.

Box 3.B describes the regulation of credit unions. Such specialised rules would also need to be devised for activities such as short term loans, home credit lending, pawnbroking, hire purchase, point of sale credit finance and possibly other categories as well. The derivation of these rules seems to us to duplicate the provisions already in place under the Consumer Credit Act, and again, we see no compelling evidence for change. Credit Unions are deposit takers, most consumer credit businesses at the SME level are not.

In our view, the need to reflect the specialised nature of many different types of consumer credit business will mean ending up with an unwieldy rule book that mirrors most of the detail already contained within the Consumer Credit Act and its supporting secondary legislation and OFT Guidance. Yet the resource requirements imposed on businesses to understand, absorb and comply with the new framework could be considerable as we could not automatically assume a repeat of CCA requirements. Needless to say the potential for regulatory uncertainty is very great.

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

Paragraph 3.22 implies that an FSMA style regime would increase fees paid by SMEs and also require an annual periodic fee. A £1,500 application fee is nearly five times the current OFT sole trader fee and an annual minimum fee of £1,000 (paragraph 3.26) would raise significant barriers to entry in the market.

In our view it would be complex to allocate SMEs into appropriate fee blocks according to regulated activity.

19 The Government welcomes:

- Evidence relating to experiences of the current appointed representatives regime
- Views on how an appointed representative 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
- Evidence relating to the implications an appointed representatives regimes might have for firms and consumers

Paragraph 3.1 makes some suggestions regarding the transference of the AR regime to credit brokerage. In our view this again lacks detailed analysis. Many credit brokers are not restricted to just one lender (paragraph 3.33) and the burden of ensuring credit broker compliance would fall to those SMEs using brokers. The advent of online lending means lead providers also fall into this category. At the moment, it is easy to check whether a particular business is licensed for credit brokerage. Under the suggested regime this would be opaque, to say the least.

20. 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.

No evidence available.

21. 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.

The CCTA supports self-regulatory codes to enhance best practice. We work with the OFT on regulatory codes and have recently introduced a Log Book Loans Code of Practice to assist regulatory understanding within that sector. We also believe that quality regulatory training is fundamental for consumer credit grantors. The CCTA run regular legal/regulatory training days that qualify for CPD points.

What is being proposed here seems no different to what is already happening in practice – trade association codes are regularly updated to reflect OFT Guidance and other issued standards, therefore there seems no reason to change. In terms of speed of update these codes are an excellent way to reflect changing market developments – the agreement of the "breathing space" arrangement is a good example of how this works in practice.

Formalising codes will have no effect on non-members. Furthermore, most consumer credit associations require members to uphold the relevant code as a condition of membership, so although codes can be considered "voluntary", in practical terms they are as "voluntary" as compliance with OFT Guidance. The CCTA Code of Practice, for example, says "*the purpose of the Code is to ensure compliance by members with the minimum standards of good practice set by the Association and to assure customers of CCTA members that they are dealing with reputable organisations".*

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?

We are unclear why the consumer credit regime is not considered transparent as all of the legislation is publicly available. Given the views of consumer groups we do not feel that there would be many, if any, categories of consumer credit where consumer detriment would be assessed as "low" – even if realistically that is the case. The CCD imposes requirements on pre-contract and contract processes for lenders and we mention again that opportunities for deregulation have largely been passed over.

The options suggested in paragraph 3.42 could be looked into whichever regime is used in particular tightening up definitions of licensable activity. As the Consumer Credit Act 2006 strengthened the OFT licensing regime with effect from April 2008 it now seems wrong to be thinking about deregulation, given the extensive consultations and discussions preceding the April 2008 changes.

23. 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?

We do not support the design of a new consumer credit regime based on an FSMA style approach and we do not consider that the consultation has conducted enough detailed research amongst businesses likely to be affected – particularly SMEs – to be able to put forward Option 1 as its preferred option.

Chapter 4

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

Paragraph 4.1 indicates that any change of regime would take "several years" to implement. However, one of the key objectives of a proposed move to an FSMA style regime is that it would be more flexible and responsive to change. In the "several years" the consumer credit market may have evolved significantly.

We appreciate the observations made in paragraph 4.2. However, if a majority of currently licensed lenders are **not** authorised by the FSA, this is further evidence that **Option 2** should be pursued as a future framework. We re-iterate here that publicly available statistics show that a majority of non credit card consumer borrowing is outside of the MFIs.

If the scope of CPMA (now FCA) regulation is to be set out in secondary legislation, this would appear to be adding layers of legislation not currently part of the CCA regime (as there is no rulebook).

For SMEs transferring agreements in existence to a new regime would be difficult. This section does not appear to take account of the provisions of the CCD, which are that member states cannot introduce legislation over and above the provisions in the CCD over those categories within the scope of the CCD. Therefore, for agreements within scope, the existing regime would need to continue. Repealing the CCA would therefore cause a problem as the secondary legislation containing much of the detail (including some of the CCD regulations) would become meaningless.

25. The Government welcomes views on:

- How existing licensees could be dealt with
- Factors that should be considered determining whether a modified approach could be adopted for particular categories of licensed firms

Paragraph 4.16 is concerning for our Members, especially the SMEs. This creates uncertainty and suggests that the Government does not support SME lenders as active players in the consumer credit markets, when many SMEs provide effective competition at both regional and local levels.

Larger businesses that are already dually authorised or regulated would again seem to benefit over SMEs here. We think it is unlikely that a “modified approach” would be afforded to for-profit consumer credit lenders.

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

Paragraph 4.20 outlines our concerns here, i.e. how best to deal with unexpired 5 year maintenance periods.

Of course any significant increase in fees will eventually be passed onto consumers in the form of increased costs of credit and possibly a restriction on supply to more risky consumers, increasing financially exclusion. This could mean SME withdrawals from the market as the costs outweigh the benefits, and SMEs find they cannot compete effectively with larger businesses.

27. Are there other factors the Government should take account of in considering transitional arrangements?

No views. This question appears to prejudge the outcome of the consultation which we feel is inappropriate at this stage.

28. The Government would welcome evidence on the experience of firms, consumers and their representatives in relation to similar previous transitions, for example the extension of FSA jurisdiction to new markets since 2000.

Many of the larger CCTA Members have had experience of FSA jurisdiction, as they were distributing Payment Protection Insurance [PPI] alongside their loan portfolio. Whilst PPI itself has had a recent blemished record, the costs associated with the transition to FSA jurisdiction has been punitive compared to the previous GISC regulation. GISC and FSA records will show the attrition rate of firms choosing not to distribute the product after the transition. The attrition rate was well over 50% of the market, many of those firms were SMEs who chose to exit the market. The secondary factor to the PPI market was the decision made by many firms not to have AR‟s, so many SMEs who would have been prepared to distribute in the market had to exit.

There is no doubt in our view that the transition to FSA type jurisdiction in consumer credit would have a similar effect, but unlike PPI there would be a significant on enterprise and economic growth.

Impact Assessment

This suggests that maintaining the existing CCA based regime is subject to considerable uncertainty. We do not agree with this as in practice, the CCA regime is quite clear and transparent, with regulations being laid. The actual regulatory body is of a secondary importance. The FOS managed to create a consumer credit jurisdiction when required to do so and we feel that if the OFT were no longer operating in its present form, it should not be so difficult to operate an appropriate supervisory body for the existing consumer credit regime.

The impact assessment does not properly quantify the likely costs on consumer credit firms, and we are particularly surprised to read that the impact assessment states, "*at this stage it is not possible to know whether aggregate net burden of compliance for firms will be positive (ie a net increase) or negative (ie a net reduction)".*

At every stage of the impact assessment only dual regulated firms are considered as one of the "main affected groups" SMEs have every right to feel short changed by both the consultation and the impact assessment. We would be interested to know how improved oversight (included in other non-monetised benefits) would enable a potential reduction in problem debt/write-offs in specialised consumer credit markets, as businesses in these sectors have specialised knowledge and skills.

A fully researched and completed impact assessment is essential to preparing a comprehensive consultation paper, as without this the costs and benefits cannot be properly assessed.

CCTA
22 March 2011

Consumer Focus
Campaigning for a fair deal

Reforming the consumer credit regime

March 2011

About Consumer Focus

Consumer Focus is the statutory consumer champion for England, Wales, Scotland and (for postal consumers) Northern Ireland.

We operate across the whole of the economy, persuading businesses, public services and policy makers to put consumers at the heart of what they do.

Consumer Focus tackles the issues that matter to consumers, and aims to give people a stronger voice. We don't just draw attention to problems – we work with consumers and with a range of organisations to champion creative solutions that make a difference to consumers' lives.

Contents

The consumer credit market

Consumer Focus welcomes this consultation on reform to the Consumer Credit Regime. Access to affordable credit is a necessity for many consumers. It allows them to manage their finances by spreading the cost of larger purchases such as household goods, cars and homes over a longer period and also means they are better able to deal with unexpected bills or temporary fluctuations in their income.

Consumer Focus is particularly concerned with the needs of low income consumers. The UK market has a number of high cost credit products, such as home-collected credit and payday loans, which are often used by people on lower than average incomes.

Low income consumers should have access to affordable credit products, designed in ways to meet their needs. Evidence from the UK market shows, that the likelihood of holding non-mainstream loans (pawnbrokers, home-collected credit and payday loans) is strongly correlated with household income[1]. These types of credit are granted relatively easily.

Low-income consumers often prioritise control, clarity and convenience, leading to high-cost choices. In the interests of sound financial management with the aim of avoiding debt, low-income consumers' priorities are leading to more expensive choices, because of a scarcity of alternative low-cost products that also meet their needs.

Our payday loans research,[2] found that even consumers who had negative experiences of using these loans were reluctant to use a credit card or overdraft instead as they viewed these products as more likely (than a payday loan) to tempt them into long-term debt.

In addition, research by one of our predecessor organisation, the National Consumer Council (NCC) found that vulnerable consumers use home credit because there are features that they find positive, including the ability to borrow small sums of money and pay them back in weekly amounts.

The UK does not have restrictions on interest rates for credit which means that those consumers that do not shop around or who are judged as higher risk can face very high repayments compared to the initial loan. In addition the level of competition in the high cost credit market is low. The recent Office of Fair Trading (OFT) review of High Cost Credit found that competition was 'limited' in relation to payday loans and that competition was 'mostly absent' in respect of home credit and pawnbroking.[3]

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[1] Department for Business Innovation & Skills (March 2010) *Over-indebtedness in Britain: Second follow-up report,* http://bit.ly/eHvpZ0
[2] Consumer Focus (2010) *Keeping the plates spinning, Perceptions of payday loans in Great Britain*
[3] Office of Fair Trading (2010), *Review of high cost credit*, p34

The Government’s proposals

A new regulator?

Consumer Focus is supportive of the Governments’ proposal to move the consumer credit regimes from the Office of Fair Trading (OFT) to the Financial Conduct Authority (FCA). We agree with the Government that a single regulator would be better placed to achieve a healthy credit market, with better outcomes for consumers. From the consumers’ perspective having two authorities for a single product (personal current accounts for example) with overdrafts is confusing. The duplication of costs arising from this dual regulation can represent a barrier to new entrants and in any case are passed on to consumers.

But while we support the Government’s objectives for the consumer credit market, our support for the actual proposals in the consultation document does represent a significant leap of faith. This is because the success of these changes to the consumer credit regime is dependent on a regulator which is yet to come into existence and whose powers and duties are yet to be determined. The consultation on the proposed changes to the regulatory landscape in financial services, *Building a stronger system,* began in a few weeks ago. While we are encouraged by initial analysis of the proposals on objectives and powers of the proposed new regulator there are areas where consumer protection will need to be strengthened.

We are also mindful that the proposal will need to go through a legislative process where amendments could be made which could either improve or weaken the regulator from the consumer perspective.

The concurrent FSA consultations on simple products and on product intervention also have the potential to lead to far reaching changes to consumer protection.

Additionally the proposed changes will require a complete culture change from the regulator and new skills and ways of thinking. It is important that the foundations for culture change are laid early to provide industry and consumers with a clear statement that this is not the same body with a new set of clothes.

In many ways, despite the constraints of the legislative process, the OFT has been able to be more focused and accessible in its regulation, more mindful of consumer and market factors as important considerations in the licensing process, and more likely to take enforcement action when things went wrong. The OFT process of taking action against firms is also faster and more transparent than that of the FSA – alerting consumers to misselling or unsafe practices by firms is vital to prevent more consumers losing out before a problem is resolved.

Consumer Focus wants any regime change to result in a market based on trust and confidence. Such a market would display the following elements:

- A customer service orientation
- Fairness, including fair charging structures and selling practices
- Provision of essential services which meet the needs of vulnerable and disadvantaged consumers
- Genuine competition and a diversity of offerings
- Low barriers to market entry and exit
- Transparency and comparability
- Appropriate regulation and a strong and empowered regulator with consumer protection at its core

Move to rule-book approach

We agree with the analysis that the current need for primary legislation to amend the law and close loop-holes is cumbersome and resulted in delays to measures to increase consumer protection.

While there would seem to be a number of advantages to moving from the licensing regime utilised by the OFT to the rulebook approach used by the FSA under the Financial Services and Market Act (FSMA) we would recommend a staged process. The first stage would entail moving the regime to the new FCA. Once that organisation was established and in charge of the supervision of consumer credit it would be much better placed to conduct a more thorough analysis of the costs and benefits of moving from licensing and repealing parts of the Consumer Credit Act. Trying to do too much too fast has the potential to cause detriment to both consumers and business.

While we support in principle a transfer of licensing to a single regulator, we do not support the wholesale repeal of the Consumer Credit Act (CCA). The repeal of the entire CCA is not necessary to enable the transfer of the licensing regime. The provisions of the CCA deal with a wide range of credit agreements, involving many measures of consumer rights and protection. While it may be possible to transfer some of these provisions of the CCA into the rule book, there are a number of consumer protection measures within the CCA legislation which we do not believe it would be possible to replicate within the rule book. The rule book governs the relationship between the regulator and the lender and it will give the borrower cause for complaint when the rules are broken. However, unlike the CCA or other statutory provisions, it will not determine the legal relationship between the lender and the borrower.

To illustrate this: Under the current regulatory structure, providers of first charge mortgages are regulated by the FSA and the Mortgage Conduct of Business rules (MCOB). However, in mortgage possession proceedings relating to first charge residential mortgages, the powers of the court in dealing with the case are determined by the Administration of Justice Acts 1970 and 1973, not by the Mortgage Conduct of Business rules (although the court may take lender behaviour and a failure to comply with the rules into account).

The consultation paper recognises the importance of retaining a number of consumer protections, such as the right of consumers to challenge credit agreements on the basis of unfairness and power of the court not to enforce an agreement which has not been properly executed. The paper also refers to the joint liability of creditors for breaches by suppliers of goods and services, which is another very valuable consumer protection that must be preserved. In addition, the CCA imposes a number of consumer protections in relation to situations of alleged default: the lender must serve prescribed documentation on the lender and the court has significant powers when proceedings are brought as a result of default. This includes the power to make a 'time order' (in order to reschedule the debt, as the court can alter the amount of payments, the period of the loan and the rate of interest in appropriate cases). This power is particularly important in relation to secured lending when the borrower's home is at stake. Consumers would be losing significant legal protections with regard to regulated agreements if the CCA were simply repealed.

We would very much support consumer protection being extended by the courts being bound to take into account compliance with the rule book when making decisions in relation to proceedings brought against borrowers in default, but would not want the statutory protection given to consumers by the CCA to be lost.

The lack of detail in terms of how it is proposed consumer protections would be retained in both the consultation paper and the fact that the impact assessment fails to consider these issues makes us concerned that very little consideration has been given to the feasibility of retaining consumer protection through the rule book alone.

Simplification and deregulation

The consultation document makes the case that the new regime should promote opportunities for simplifying rules and regulation and remove unnecessary burdens on firms which have no consumer benefit. We do not support unnecessary regulation, as this is not in the consumer interest. However, in financial services, it is not helpful to talk about regulation as a 'burden', given that the case for intervention here is to correct substantial market failure, provide safeguards against any repetition of past industry irresponsibility and remedy a significant imbalance of power between industry and consumer. As Mervyn King recently noted banks exploit 'gullible or unsuspecting' customers.[4]

The consultation references the review of consumer credit and personal insolvency[5] as an example of where it has asked for views on how it 'might remove unnecessary burdens without removing consumer protection' (p21). However, as we stated in our response[6], that aspect of the consultation was a failure as the options for deregulation were listed in bullet points without any explanation of their purpose, much less any exploration of the costs and benefits. This did not constitute consultation in any meaningful sense of the word. We agree with the Government that any changes involving simplification and deregulation should follow a full and meaningful review of existing consumer credit regulation.

[4] http://bit.ly/fzTUbc
[5] BIS: Managing Credit and Dealing with Debt 2010
[6] http://consumerfocus.org.uk/g/4o9

In assessing this issue, the full cost-benefit analysis needs to be taken into account. Cost benefit analysis to date has often looked purely at whether there are measurable benefits to consumers and then quantified the costs to industry. Qualitative and quantitative measures are extremely hard to balance. Disincentives to unfair behaviour and the subsequent cost savings in supervision and enforcement this might entail are seldom considered, nor the relative cost burden in terms of a proportion of firms' profits.

Effective regulation will promote a better market place with more efficient product and service provision. We do not want to see the regular emergence of a misselling scandal or unsafe practice involving high consumer detriment and huge numbers of complaints to the FOS. As Adair Turner in the FSA Annual Report, 2009/10 comments, 'this periodic process of large scale customer detriment and then customer compensation is not an acceptable or sensible model for the future.'

Before we can deregulate we must look at how we can promote reduced risk taking. This may impose restrictions on current activities but will shift the industry itself to develop better operating models. The current system rewards inefficiency and entrenches advantage.[7] It is those models not responsive to change and geared to serving their own purposes, rather than the stability of the market and the interests of consumers, who will be impacted most with a movement towards a more sustainable regulatory model. New entrants and those who are more flexible and better able to respond to consumers will be in a better position to serve the market. The fact it is proposed that the FCA should have a duty to use competition as a tool to promote consumer protection will prove helpful in this respect.

Fees

There is a huge difference between the typical fees paid under the current FSA and OFT regimes, and the period over which they apply. A move to a FSMA-based regime has the potential to result in a significant increase in fees for many firms. We support the Government's approach that, in setting fee levels for authorised credit providers, the FCA will ensure proportionality and consider the appropriate level for minimum fee requirements for different types of business. Consumer Focus wishes to see healthy, competitive marketplace in credit encouraged. Well run small businesses and other small players such as credit unions, microfinance schemes and co-ops providing a wide choice of products, services should be actively encouraged to form part of the credit market. We would not want to see these types of organisations excluded from the market by the fee regime.

Supervision

The rulebook approach is based on the supervisory relationship FSA has with its firms. There are 800 supervisors for the 27,000 firms the FSA authorises and even the smallest firm gets a four-yearly visit. The OFT licences 96,000 companies and does not maintain a proactive relationship, responding only to reports of wrong doing via its enforcement arm. The fee for a credit licence is £1,000 with no annual costs. How much supervision would this buy under a FSMA style system?

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[7] Andrew G Haldane, Executive Director Financial Stability, Bank of England, *The $100 billion question* (March 2010).

With such a large number of credit providers to supervise a key piece of the jigsaw is likely to be the use of the wider implications process arising from Financial Ombudsman Service (FOS) complaints. It is therefore essential that this mechanism for reporting rogue firms and unfair practices is strengthened.

But it is not enough to identify problems – the regulator must be prepared to act. The effectiveness of licensing regime depended on a strong enforcer that responded quickly to problems brought to its attention. The OFT used its powers to revoke the licences of those who it found to have breached it rules.

There are some useful new tools in the amendments to the FSMA that came into force in June this year such as the power to impose suspension or restrictions on authorised persons (which could be suspending a firm from selling a particular product), and removing the previous restrictions on imposing a financial penalty and withdrawing a person's authorisation. These powers must not be left to rust.

Proportionality

While the Government is not clear on what adopting a 'proportionate approach' will mean in practice there is a suggestion that the new regulator could adopt a sliding-scale of compliance for firms.

We are concerned that calls for regulation to be proportionate on the many smaller companies licensed by consumer credit regime could lead to either to an inappropriate lighter touch throughout the rulebook or to regulatory arbitrage whereby companies arrange themselves as legal bodies in such a way as to best minimise the impact of the rules upon their business. Regulation should be determined according to risk, based on an assessment of the trading activities of the lender in question, rather than simply the size of the company concerned.

The consultation uses the different approach to the regulation of credit unions as a current example of a flexible approach to regulation. However credit unions do not share many characteristics with the majority of small companies offering the different types of unsecured credit. Credit Unions are set up for the benefit of their members, on a not for profit basis and with oversight of a strong body – the Association of British Credit Unions Limited (ABCUL) – and their activities are inherently low risk. Even within this low-risk category there has been the occasional failure, for example the forced closure of Hackney Credit Union[8] which underlines the need for caution when adopting a lighter touch approach.

Group licensing

The consultation suggests a possible extension of the group licensing regime (Question 20) and invites 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. In principle Consumer Focus believes that a group credit licence approach can provide consumers and relevant businesses with significant benefits. Requiring all businesses that engage in low risk consumer credit activities to obtain an individual credit licence from the OFT would impose an unnecessary and disproportionate

[8] http://bit.ly/eh7OM1

cost on businesses, and as such increase the price of such products and services for consumers. However, we would like to emphasise that consumer credit activities that have a high risk of consumer detriment are not suitable to be covered under a group credit licence.

Also, a group credit licence should only be issued where a professional body has a working disciplinary process to enforce the terms of the group credit licence. While many industries are represented by a trade association, many of these trade associations will not be able to effectively supervise their members. Therefore, while we believe that the group credit licensing regime could be extended, we would like to caution that many consumer credit activities will not be suitable for a group credit licence regime as the activities are either high risk, or no suitable trade body exists to enforce a group credit licence.

Citizens Advice has recently published a detailed report into civil recovery and raised concerns with the Solicitors Regulation Authority (SRA). Civil recovery involves solicitors firms writing to consumers, accusing them of shoplifting or employee theft, and demanding substantial sums of money as compensation for the 'loss and damage caused by your wrongful actions'.[9] What has been termed 'speculative invoicing', solicitors write to consumers, claiming that copyright has been infringed by means of their internet connection, and demand typically in the region of £500 to settle the case. Thousands of consumers have received such speculative invoices and consumers have been complaining to the SRA since 2007. In its *Guidance for consumer credit group licence holders and applicants* from December 2010 the OFT clarifies that:

'While it is the case that any application for a group licence will be assessed on its own merits and on a case by case basis, there are three broad categories of applicant that we currently consider are most likely to meet the criteria to engage in regulated consumer credit activity under the cover of a group licence:

- advisory organisations with altruistic aims
- professional bodies with established disciplinary arrangements, whose members only engage in low risk credit activity
- professional bodies with established disciplinary arrangements, and that have, in particular, sufficient awareness – and understanding – of the risks posed to consumers by the high risk credit and/or ancillary credit activities of the individual members of the group, such that they can ensure that all the members of the group take appropriate steps to mitigate those risks.'[10]

In our view the Law Society (England & Wales) does not fall within these criteria. While a large number of solicitors covered by the Group Credit licence held by the Law Society engage only in low risk credit activity, some of the Law Society's members evidently engage in high risk credit activity, which has lead to considerable consumer detriment in the past three years. The Law Society does not currently provide a functioning disciplinary process through which complaints by affected individuals or consumer representatives are addressed and resolved in a timely manner. Before issuing a group credit licence the new regulator should undertake a thorough assessment of the disciplinary process, which needs to be working, rather than just being established on paper. If it is evident that the disciplinary process is not working, the group credit licence should be revoked as a matter of urgency.

[9] http://bit.ly/i6UEsi http://bit.ly/gnyQJv
[10] Guidance for consumer credit group licence holders and applicants, pg.10 and 11

We are not convinced that any high risk credit activity with a profit motive should be covered under a group credit licence. Consumer Focus also strongly recommends that any group credit licences clearly establish which group credit activities are covered under the licence.

Those who hold a group credit licence, and the Law Society in particular, should make it clear to the public which activities are regulated under this licence. All other activity should be considered outside the licence and solicitors engaging in this activity should require an individual consumer credit licence.

Options for how the overall level of consumer protection might best be retained or enhanced

Reputational regulation

The OFT Supreme Court action on unauthorised overdraft charges identified firms at the initiation of action. Although the action was unsuccessful it provided valuable information to consumers about how different firms were dealing with them and consumers themselves became part of a public campaign to address unfairness in the system. It had an impact on firms' behaviour, at least in the short term while there was threat of an adverse decision, and brought charges down, as well as resulting in agreement about greater transparency of charges.

Civil cases and enforcement actions take years to complete and even then often go on to appeal. In a market where consumers are unlikely to initiate individual civil actions against their banks it is up to the regulator to make positive interventions in the market and for these to be transparent in order to empower consumers to make the right choices about their personal finances.

The FSA has been a reluctant reputational regulator. It does not reveal details of investigations until concluded, nor does it provide information about the firms that are not satisfactorily complying with requirements.[11] The new regulator should be open in its investigations and regulatory activity and therefore accountable. Positive steps have been made recently with the requirement on banks to publish complaints data but more and better information is needed so that consumers can make real choices and businesses are more motivated to treat their customers fairly. Reputational regulation may, in itself, help develop a trusted brand approach in the industry. We would want the advantages of the credit licensing system in this respect to transfer to the FCA.

The FSA has indicated that the FSMA and other laws prevent them from both disclosing early information about enforcement action and the compliance records of firms.

It shows the influence of the industry and the timidity of the regulator that the FSA has not even tried to exercise its powers in this respect. It is also a signal that the future regulatory regime should not only ensure justice is done but must be seen to be done and that any suggestion of legal impediments needs to be removed through clear drafting of powers.

The industry is concerned about reputation, however there is no reason the financial services industry should not be subject to the same rules that any firm facing civil action is subject to.

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[11] Consumer Focus, *Rating Regulators*, March 2009.

Section 77-79 Consumer Credit Act

One key area of consumer detriment is the issues arising from the interpretation of sections 77-79 of the Consumer Credit Act. In response to the OFT's consultation on this issue last year we argued that it should judge worthiness to hold a credit licence based not only on lenders' legal duties but also the duties to act fairly and to provide their customers with information about their contract. It is our view that a failure to hold adequate information on contracts should surely reflect the general ability of lenders to undertake lending activities fairly and competently.

These sections will be used by consumers who have lost their details and want to understand what the original contract stated or to understand how much they currently owe. Or it may be used where the consumer believes that there might be a disparity between what they thought they were agreeing to and the signed document.

It is particularly helpful if the customer gets into financial difficulties and they wish to know what options are available especially if there is a dispute with the lender.

We also argued that information provision should entail the original terms and conditions, variations and statements of protections and remedies available under the 1974 CCA as well as the amount owed and when the next payment is due. While we understand that the Carey case confirmed that only a 'true copy' is required under the relevant sections of the Act, we have significant concerns about fairness and due process arising from this. If a credit card company cannot find a debtor's original agreement, the lender can provide a duplicate 'reconstituted' agreement. This does not need to show the consumer's signature, according to what the lender believes are the current or historic terms of the regulated agreement. While this may be in the interest of the credit card companies, this is clearly not in the interests of consumers. We are aware of anecdotal evidence of cases where companies have provided reconstituted copies of agreements, which have been found not to be a true reflection of the original agreement and which vary in factors which impinge on the enforceability of the agreement.

Related to this issue, we have real concerns that when a creditor sues a consumer under a regulated agreement, they are not required under the Act to attach even a 'true copy' to the court writ. The rules of natural justice, if not the law of evidence, would suggest that if someone is being sued for money they allegedly owe, proof of the debt, in the form of the signed contract, should be produced before the relevant court.

This issue has been brought to our attention by the Sheriff Court Rules Council, which has responsibility for preparing draft rules for the sheriff courts in Scotland. In 2009, the Rules Council tried to introduce new court rules which would require creditors, in all court actions relating to regulated agreements under the Act, to attach a copy of the regulated agreement to the summons. Numerous representations were made by lenders, some of whom argued that because the CCA did not require this to be done it was not competent for the Rules Council to make a rule in those terms. In light of the representations the Rules Council decided to instruct deletion of this requirement.

The issue that the Rules Council tried to address is not of course a Scotland-specific issue, and applies throughout the UK. It is most concerning that anyone can be sued in court with no requirement to produce proof that an agreement exists, particularly as many actions will be undefended. We see no reason why a reasonable demand for a contract certificate or deed of money owed should be enforced if the documentation is not present and correct.

The OFT does not have the power to change this situation; we suggest that Government considers enacting legislation to restore consumer protection in this area.

It is of real concern to us that a credit provider or hirer may not be able to produce a signed copy of a contract on request. It moves away from a common sense meaning of true copy and does have implications for evidentiary requirements in relation to whether there was a properly executed agreement in the first place (which is one of the significant reasons why this section is used by a consumer). The failure to securely keep a signed copy of the contract may also be in breach of Data protection Principle 7 in the sense that appropriate technical and organisational measures were not taken against accidental loss or destruction of, or damage to, personal data.

Our second major concern is the enforceability of a regulated agreement where no documentation is provided by the lender whatsoever. We are concerned the OFT's guidance creates inherent ambiguity around enforceability of debts that will simply confuse consumers. There is an obligation on lenders to act fairly, to keep consumers informed about their rights and to lend responsibly. We welcome the obligation on the lender to write to the customer confirming unenforceability, but we strongly oppose the proposal to allow the lender to pursue the debt in other ways. Allowing enforceability by indirect pressure is not fair and is not intended by the legislation. While we agree consumers should have a responsibility to pay any debts owed the duty is reciprocal – responsible borrowing should sit alongside responsible lending. If the lender fails to fulfil this duty the debt should not be pursued in any way.

Concerns have been expressed that the claims are being driven by the claims management companies but we have not been provided with any evidence that consumers are using this section in significant numbers as a way of getting out of their debt. Proper regulation of these organisations together with assistance from the FOS is a more appropriate response.

Timing

We are concerned that the timing of the move from the OFT to the FCA coincides with the proposed merger of the OFT with the Competition Commission and a hiving off of its enforcement powers to the Trading Standards. It is important that consumer protection is not weakened during the transition and that rogue traders and misselling continue to be investigated and punished. We recommend that the OFT retains responsibility for the investigation and enforcement of consumer credit regulation of its firms while the FCA is being formed and then a shorter timeframe for the transfer of firms from the one regulator to the other.

Devolved working

Even though consumer credit is a reserved matter, it is important to embrace a genuinely UK-wide culture and for the regulator to respond to possible different needs of consumers in the nations. They should also be mindful of impact on consumers of the differences in the legal system in Scotland, and the different court processes which apply in relation to consumer credit disputes. If regulators are not sufficiently tuned in to the policy and legal environments of the nations they risk taking decisions that have unintended negative consequences in these arenas.

Conclusion

Consumer Focus' starting point is that regulators, across all markets and sectors, must have the appropriate tools and mechanisms available to them to be able to apply proportionate and targeted remedies where consumer detriment exists.

Research for the concurrent consultation on simplified products identifies consumers' lack of trust in market offerings of financial products.[12] Both the FSA and OFT were seemingly unable prevent the unfair practices, lack of real competition and waves of misselling that have had such a serious impact on people's personal finances and on the wider economy.

This was partly due to shortcomings in the tools and mechanisms at their disposal but more importantly was a failure of the culture in these regulators.

Since the financial crisis both regulators have moved towards a more active and intrusive culture where early intervention is much more likely. This culture will only continue to thrive in the new regulatory structure if the Government engenders a climate that favours sustainability over quick profit and financial inclusion over innovation that benefits few consumers.

To facilitate this culture we propose that Government periodically issues a strategic statement, setting out what it expects the regulator to deliver and what the Government's own role will be. Implementation is then a matter for the regulator, working within the strategic framework set by Government. This allows for clear accountability to the elected government, while making the most of the specialist skills and expertise within the regulator[13].

[12] HM Treasury, *Simple Products Consultation*, p7
[13] Consumer Focus Fresh Thinking*, Regulating in the consumer interest, March 2010*

Reforming the consumer credit regime

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Department for Business, Innovation and Skills and HM Treasury

A new approach to financial regulation: consultation on reforming the consumer credit regime

A Response by Credit Action

Background

Credit Action is a national money education charity (registered Charity in England & Wales No. 1106941) established in 1994.

In January 2009 we also created our dedicated Welsh arm, Credit Action Cymru.

We offer a range of resources, tools and training to help everybody handle their money well, and to inform consumers so that they can make informed decisions about their personal finances.

Credit Action operates at a national level through advocacy, collaboration and partnerships with various groups and companies as well as at a local level through a variety of targeted projects, with a particular emphasis on those most vulnerable to financial difficulties and over-indebtedness. Through its work Credit Action reaches over 650,000 UK citizens every year.

We try and help as many people as possible avoid the pain of debt. However we recognise many contacting us will be in trouble already, so we work in partnership with the major debt counselling charity the Consumer Credit Counselling Service (Registered Charity No. 1016630).

Opening Comments

As an organisation which is strongly committed to supporting consumers and addressing issues of detriment, Credit Action takes a keen interest in regulatory matters. We also have a number of current members of staff who have previously worked as professional debt advisers, and have therefore been licensed under the terms of the Consumer Credit Act. Consequently, we are eager to contribute to the current consultation on reforming the regulation of consumer credit, as we feel this is an issue which is of considerable importance to ensuring that consumers are adequately protected and have a clear understanding of their rights.

In this response we have focused on two of the central questions in the consultation – Questions 1 and 12 – which concern our assessment of the existing consumer credit regime and our views of the Government's proposals for change. While we believe that the Government's current plans to reform the existing regulatory system are undoubtedly motivated by a strong desire to put consumers first, we feel that the Consumer Credit Act has generally worked effectively and that the scale of the transition proposed has the potential to create difficulties for credit providers, debt advisers and consumers. For this reason, of the two options put forward in paragraph 2.3 of the consultation we would currently support Option 2, under which the Consumer Credit Act would remain in place.

Question 1: Do you agree with this assessment of the consumer credit market?

We understand that Government has a number of concerns regarding the current operation of the Consumer Credit Act as outlined in paragraph 1.17 of the consultation, and recognise that some anomalies do exist in the current system – the regulatory split between current accounts and overdrafts (mentioned several times in the consultation including in paragraph 2.6) is one of the most significant of these from our perspective.

However we feel that the Government's analysis overlooks many of the benefits of maintaining the current consumer credit regime. The fact that the Consumer Credit Act is well established means that all stakeholders – including credit providers and debt advisers (the latter being especially important from our perspective) – are able to operate in an environment of relative certainty with respect to the Act's terms and jurisdiction (even given its specific complexities, with regard for example to overdrafts). The value of this should not be underestimated, and the impact that transferring to a new and, in the context of consumer credit, unfamiliar regime is something we are very wary of. In order to justify making a transition of this magnitude, we feel that there needs to be a clear and compelling argument to show that the existing system is causing significant and immediate detriment to consumers. At present, we question whether this is the case.

We do not pretend that the Consumer Credit Act is perfect (indeed, it is important to recognise that no regulatory regime is), and there are undoubtedly anomalies. However, on balance we do not feel that the existing imperfections in the regime justify its complete removal. Ultimately, we remain to be convinced that there is an urgent case for fundamental reform of the regulatory system, which in our opinion generally works effectively.

Furthermore, we also feel that the potential for the proposed reform to actually enhance consumer detriment is something that requires further consideration.

We note that the Impact Assessment produced alongside the consultation (BIS0132) states that at this stage 'it is not possible to know whether the aggregate net burden of compliance for firms [under the proposed new regime] will be positive (i.e. a net increase) or negative (i.e. a net reduction)'. As the precise impact the proposed reforms would have on firms is currently unclear, we are concerned that the risks associated with transition may not yet be fully understood.

The Impact Assessment goes on to consider the possible problems which might be caused if there is an increase in compliance burden leading to market exit, which 'could lead to consumer detriment through reduced choice of suppliers and have an adverse impact on innovation and use of illegal lenders', as well as firms passing on the 'increased cost to consumers in the form of higher prices' (p. 2). These are two outcomes that we would find particularly alarming.

We of course recognise that Government is statutorily obliged to identify the potential risks posed by any policy, and do not read these risks as necessarily inevitable. However, the point being made is that as the compliance burden is not fully quantified, the level of risk of market exit cannot be judged with much certainty. Consequently, we feel that the possibility of significant consumer detriment occurring is something that requires deeper reflection.

As a final point, we would stress that the impact of any transition on the debt advice sector, which is also subject to regulation under the Consumer Credit Act, is particularly important from our point of view. If any regulatory shift were to take place then we would at the very least like to see a rigorous cost-benefit analysis of the specific impact on the debt advice sector taking place first.

<u>Question 12:</u> 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 1)?

We recognise that Government's preference for Option 1 is driven by a strong desire to provide a regulatory structure which protects consumers whilst imposing a proportionate burden on firms, and that this underpins the four key objectives outlined in paragraph 1.18 of:

- Clarity, coherence and improved market oversight
- Effective and appropriate consumer protection, including through a responsive and flexible framework
- Simplification and deregulation
- Proportionality and cost effectiveness

However, further to our response to Question 1, we would suggest that certain aspects of the proposed new regime may undermine efforts to meet these objectives to at least some extent.

In terms of providing "Clarity, coherence and improved market oversight", we recognise that Government's central concern within this objective is to remove some of the inconsistencies present within the existing regulatory structure, but would reiterate the fact that we are wary of the effect that a shift of this scale will have on the certainty with which key stakeholders are able to operate. While the reforms aim to enhance clarity, we fear that the immediate impact of the change will be disruptive to some degree, and that this has the potential to impact on consumers, providers and advisers.

Furthermore, the remaining three objectives all contain aims which may be impacted by the uncertainty over the compliance burden on firms which we have already referred to. Providing "Effective and appropriate consumer protection" may be undermined to some degree if market exit takes place and creates conditions in which consumer detriment is enhanced. Meanwhile, both the "Simplification and deregulation" and "Proportionality and cost effectiveness" strands aim to some extent to reduce the burden on firms, which, on the basis of the Impact Assessment, is not something that can necessarily be guaranteed at this stage. Therefore, we would question whether the proposed shift to a new regulatory regime will currently meet all the Government's objectives in full.

Overall, we feel that there are still outstanding issues concerning the potential regulatory transition outlined in Option 1, and that the scale of the change has the potential to create problems. Therefore, of the two options put forward in the consultation, we would prefer to follow Option 2 at this stage and maintain the Consumer Credit Act.

Contact

For further information on the comments made in this response, please contact John Davies, Joanna Parsley or Richard Talbot by email at office@creditaction.org.uk or by telephone on 0207 380 3390.

Response to the Consultation Paper by

Credit Services Association

and

Debt Buyers and Sellers Group

A new approach to financial regulation: Consulting on Reforming the Consumer Credit Regime

HM Treasury and Dept for Business Innovation and Skills
Issued December 2010

Contents

1. Executive Summary

- Whilst there has been a highly successful working relationship with the Office of Fair Trading, the Credit Services Association (CSA) and the Debt Buyers and Sellers Group (DBSG) together referred to as 'the Association', support the Government's preferred option, that being Option 1, transferring the granting of licences and the job of regulation to the soon to be created Financial Conduct Authority (FCA).
- The Association is however, keen to draw attention to the concerns this option raises in this consultation response and believes the Association can bring proven skills and experience and be a valuable member of the team that ultimately puts together the specialist rule book for the debt collection and purchase industry, incorporating our voluntary code, the CSA Code of Practice.

The Association believes the following need further consultation before a FSMA style Rule Book is written and consideration needs to be given to these items now if any there could be any impact to legislation in the meantime – further details can be found later in this document:

- **Potential limited knowledge of the debt collection and purchase industry** – the industry is unique and we would be concerned if the rules did not take this into consideration and were only drafted from a creditor's perspective

- **Change for change sake?** – There are parts of the existing Consumer Credit Act which should be retained

- **Potential loss of Voluntary Codes and the parts they play in regulation** – voluntary codes are specifically drafted for an industry and are, therefore, an excellent basis for rule books and a way of gaining acceptance from the industry

- **Outcomes regulation** – we believe this would be difficult to apply fully in the debt collection and purchase industry

- **Cost of regulation –** could be prohibitive for some of the Association's members – uses a different model to a trade association who can subsidise smaller members fees

- **The loss of smaller operators** – due to the complexity and administration of new regulation

- **Reduction in competition** – due to loss of some operators

- **Capital adequacy** – debt collection and purchase is a relatively simple business model which does not require large reserves of capital

- **Appointed representatives –** we do not see how this would work in this industry and are concerned that it would result in indirect regulation of the industry -we are not involved in such activities as selling loans, life assurance, or taking deposits, and therefore it is hard to see how there would be a benefit or practical application

- **Transition arrangements –** these will be critical, particularly as the changes have been described to us as an 'evolutionary' rather than revolutionary process and we would ask for a 'grandfathering' principle to be adopted

Throughout this document, we talk about giving support for Option 1, whilst also highlighting our concerns for the application of a new regime. We have also taken this opportunity to provide some background information on the way our industry works and how we can offer guidance and support to the new regulator.

2. Background Information about the Association

The Credit Services Association (CSA) is the only national association in the UK for businesses specialising in debt recovery, tracing and related services. It also incorporates the Debt Buyers & Sellers Group (DBSG), with members ranging from high street banks to credit reference agencies and debt buyers. Our aim is to continually develop and uphold the highest professional standards across the credit industry.

Around £20bn of debt is passed to CSA members each year for collection (around 15 to 20 million cases), and we return over £2bn to the UK economy every year from this debt. At its peak in 2007, around £7.5bn of debt was bought by our DBSG members. Our clients include major financial institutions, government departments and local authorities, utilities, mail order and telecoms companies.

The CSA has 338 members, and the DBSG has 80 members, with 46 being members of both. Around 90% of the debt collection agency (DCA) companies and most of the debt buyers operating in our industry are members of the Association.

Most creditors insist that the DCAs they use are members of the CSA as they value the benefits membership of the Association brings, particularly the Code of Practice to which all members have to agree to follow.

20% of the Association's membership consists of 'larger' companies with around 80% of the business in our industry being conducted through them. These companies collect nationally and employ somewhere between 100 and 700 people each. The remaining 80% of the membership are small to medium sized enterprises, often employing less than 20 people.

The smaller companies account for about 20% of the activity in our industry, but provide often highly specialised niche services recovering both consumer and commercial debt to local businesses and are an important and integral part of the industry despite their size.

The collection of debt is based on a relatively simple model which involves a client (a creditor for example) passing a number of debt cases (i.e. accounts which have defaulted and are in arrears) to a DCA, who then makes attempts to contact the customers, negotiate affordable repayment plans where the creditor had failed to do so and return the money to the client less an agreed rate of commission based on the amounts collected.

The same model applies in principle for a debt purchaser, only in this case the debt is purchased from the creditor for an agreed amount per £ face value of the debt, title passes to the purchaser and all the funds collected are retained by the purchaser.

The Association has Three Main Goals:

1. Promoting Fairness for all

- Continually raising the professional standards of our members
- Ensuring consumers receive timely, accurate information and advice
- Protecting and advising the honest consumer
- In return, the customer has a responsibility to provide information and tell the truth

2. Improving Data Quality and Access

- Improving data quality from creditor to credit reference agency to buyer/agent
- Registering up to date details of individuals' financial circumstances at credit reference agencies
- Reduction of "mis-trace" by means of access to the full electoral register
- Further access e.g. via NCOA, NI numbers and tax information

3. The Right Balance of Regulation and Self-Regulation

- Encouraging proportional, effective regulation and enforcement from government
- Industry standards react more quickly than legislation, and are often more relevant
- Our new Collector Accreditation Initiative (CAI) is helping to ensure best practice and higher standards within consumer collections
- The DBSG Continuous Improvement Programme (CIP) provides for comprehensive, independent, standard-based audit of debt buyers
- The CSA has well-respected complaints handling processes and new sanctions
- The CSA and DBSG work closely with the OFT on debt collection guidance and recently helped enforce standard letter changes across the Association.

3. Overall Response to Consultation

The CSA and the DBSG are supporting the Government's preferred option

- The Association has developed and continues to have a highly successful and productive relationship with the Office of Fair Trading; however, we want to support Option 1, transferring the granting of licences and the job of regulation to the soon to be created Financial Conduct Authority (FCA).

- The Association does, however, want to ensure that the interests of the debt collection and purchase industry are fully considered and we do have some serious concerns about how this will be achieved in the new environment under a completely different regulatory framework. These concerns are clearly laid out in the section entitled:

We believe we can add valuable knowledge and experience that will help create an effective and proportionate new rule book

- We evidence throughout this response our concerns and areas for consideration but also offer our services throughout what Hector Sants and Mark Hoban recently referred to as an evolution of this new regulation. We talk later about some of the initiatives we are running under the heading: ***The Right Balance of Regulation and Self-Regulation,*** which we believe evidences the credibility and expertise we bring to the table. We support Option 1 in the hope that we can be involved in the creation of the rule book for our industry and that our Codes of Practice can be utilised within the new regulation.

The FSA and the OFT have operated successfully in their own respective spaces for some time and naturally, their method of regulating has developed very differently.

- Whilst the FSMA approach to regulation through a rule book rather than primary legislation is a very different approach in itself, the ways in which the respective set of rules or laws have developed and the directions they have taken have also been very different.

4. Concerns – Key Areas for Consideration from the Questionnaire

Potential Limited Knowledge of Our Industry

- Without wishing to be disrespectful, the distinct lack of reference to the debt collection and purchase industry in the consultation paper leads the reader to think that either this consultation does not apply to our industry (which we know it does) or there is an acute lack of knowledge or information to hand about our industry, which is entirely possible and understandable. The concern is that if decisions are made without giving particular consideration to how this specifically affects our industry, this could actually create more issues than it solves. The Association is able to offer advice and guidance about how the industry works and how an effective and proportionate rule book could be written.

Change for change sake?

- The existing consumer credit regime, although complex, is very detailed and sets out all requirements comprehensively. Although there are some provisions which do require amendment, we believe that it is mainly the manner in which the Consumer Credit Act, and its subsequent Regulations, are laid out that requires simplification. The move to an FSMA style rule book would mean much more subjectivity in a consumer credit regime which is already complex and stressed in the litigation arena. The rule book based approach could promote inconsistency in the manner in which the consumer credit regime has to be dealt with, more specifically the content and framework of credit agreements. It has to be borne in mind that the FSA Handbook is principle based regulation allowing more subjectivity, whereas the consumer credit is dealt with under a statutory regime which is largely objective and allows for lesser uncertainty and more statutory interpretation by the Judiciary. Furthermore, the Judiciary is required to interpret legislation; and Regulators are required to ensure that the legislation is adequately enforced. With FSA based regulation, the Judiciary would have very little impact and the Regulators would specify the rules, provisions and policy to which creditors must adhere to, which has not gone without difficulties in the past (issues surrounding PPI and Endowment Policies) which stem mainly from principle based regulation.

Potential loss of Voluntary Codes and the parts they play in regulation

- We understand that the aim is to increase the speed and ability for change through a rule book over statutory legislation, but we actually think that such a major change of regulation will have the opposite effect, therefore defeating that goal.. Voluntary codes are often preferred by governments as they are known for their 'fleet of foot', are inexpensive to the public purse and funded in a unique way that recognises the ability of the respective members to contribute for the greater good. More importantly, a voluntary code is 'bought in to' by members and not imposed on them. Language, which is common to and understood by both member and regulator alike, is applied more quickly and effectively even than a rule book. We are concerned that losing the voluntary code or not having it largely adopted into a new rule book would mean a slower speed of change.

Outcomes regulation

- It is difficult to see how results based or outcomes based regulation can readily be applied to debt collection and this will require careful consultation and consideration. Although debt collection and purchase is part of the financial services industry is not lending, product creation or sales, deposit taking or other type of financial services product currently regulated by the FSA. For example, applying the current outcomes principles, it would be an interesting concept to consider the equivalent of putting someone back into the position they were in before they had paid money to a DCA – i.e., putting them back into debt...

Cost of regulation

- We do not believe the government would want to see a significant reduction in the number of operators in the industry and we fear the cost of this regulation would result in this happening. We understand that the FCA advocates a low-risk approach to regulation – and this does not mean light-touch; it means greater scrutiny and a more intrusive approach in order to reduce the risk and therefore the cost of such regulation is likely to be high. However, it isn't just the potential increase in the direct cost of regulation – currently around the £1000 per annum mark for the smaller FSA regulated firms compared to the current £1000 (approx) for Consumer Credit Licence every five years - but the indirect costs. These would include for example, additional resource to administer rules and complete reporting requirements and significantly higher Professional Indemnity insurance based on the past experiences of FSA regulated firms. Contrary to popular belief, this is not boom time for debt collectors. Just because there are stories of huge amounts of debt in the news, doesn't mean it is actually happening and even if it were, it doesn't mean consumers are in a position to pay it back – quite the contrary in fact with smaller amounts being collected.

The loss of smaller operators

- 80% of the Association's members are small companies, employing often less than 20 employees. They provide the niche specialist services which many larger agencies do not provide, and are a very valuable part of the market. Reductions in the amounts collected and increased losses in key areas of our industry means an understandable change in underwriting and a restriction in lending, and increased costs of regulation is likely to result in more businesses closing with loss of jobs throughout the regions, which at the current point in the economic cycle, would be highly detrimental.

Reduction in competition

- Contrary to the stated aims of the new FCA which include allowing the creation of more competition, the potential reduction in the number of operators in the collections industry will result in a reduction of competition. Typically, reduced competition leads to increased prices and usually these are passed on to consumers – in this case through higher interest rates or charging structures as lenders seek to recover the cost of collecting their defaulted customer accounts.

Capital adequacy

- We question why this would be a requirement for our industry. We are not deposit takers; we are not lending, we are collecting and buying debt and the dynamics are very different. In providing debt collection services, our members typically hold client funds (i.e. money collected on behalf of creditors) for less than a week. Any detriment would be to the creditor if the funds could not be recovered. Similarly in a debt purchase situation, there would be no consumer detriment. For the same reasons that outcomes or results based regulation would not be necessary for our members, there is no need to hold capital on a 'just in case' basis. The financial model for debt collection is very simple. Cases are passed to us to collect, we make collections where possible and ethical, we pass the money back to the client less our agreed commission. Debt purchase is the same, the difference being that the money collected is retained by the buyer as the legal owner of the debt.

Appointed representatives

- It is extremely difficult to see how this would work for our industry as this is not a lending, sales or deposit taking industry. Trying to apply the principle of appointed representatives to our industry conjures up images of a reduction in ability to compete, a dumbing-down of the specialisms and creativity that exists in the market place now, all things that the FCA want to encourage. It would also remove direct regulation as companies would be regulated through a regulated creditor, applying their interpretation of rules which are probably not specifically designed for debt collection and debt purchase. We strongly believe that this would be a backward step for the industry. The Association and its members have put (and continue to put) a huge effort into raising standards, compliance and working with regulators to understand the industry and set appropriate standards because we have direct interest but this will be largely lost in an appointed representative regime and would be detrimental to the consumer.

Transition arrangements

- Although the potential change to the regulation will be an evolution, there will still need to be appropriate arrangements for transfer to the new regime. One of our concerns is that there may be no or very limited transition arrangements for those firms/members of the Association who are currently licensed by the OFT and who might not be able to trade from day one of the new regime unless grandfathering is allowed. This applies especially to those firms/members who have recently secured a renewal to their Consumer Credit Licence having been through a fairly rigorous new licensing application process.

5. The Right Balance of Regulation and Self-Regulation

Striking the right balance between regulation and self-regulation is at the heart of everything we do. To demonstrate our ability and credibility in this area and why we believe we qualify for a seat at the table when writing a new rule book if the FSMA-style regime does gain approval, we briefly explain below our key initiatives and programmes. These are designed to demonstrate appropriate and proportional protection to both the companies operating in the industry and the consumers we deal with every day.

Encouraging proportional, effective regulation and enforcement from government

- We are able to help the government and regulators understand the parameters of the credit industry, and have worked effectively to support the aims of the industry whilst ensuring compliance with all relevant legislation and regulatory guidance.

Industry standards react more quickly than legislation, and are often more relevant

- The Association can quickly incorporate changes into its Code of Practice to reflect the dynamic environment in which our members operate. Recent requirements to grant breathing space to consumers, new debt purchase and tracing guidance and new disciplinary sanctions are examples of the constant development of the Association's rules and regulations.

Our new Collector Accreditation Initiative (CAI) will help to ensure best practice and higher standards

- This new CSA initiative will test the collection staff of member companies on an annual basis. The online test for anyone involved in consumer collections is carried out against an extensive question bank, which will evolve to reflect new legislation, rules, regulations, guidance and collection practices as they happen.
- Underpinning the Collector Accreditation Initiative is the Association's extensive training capability, including the City and Guilds accredited CSA Diploma.

The DBSG Continuous Improvement Programme (CIP) provides for comprehensive, independent, standard-based audit of debt buyers

Also launched in 2011, this DBSG initiative provides external verification of compliance and operating practices by the DBSG members, and is being undertaken independently by a top accounting firm. A combination of self-certification, scrutiny of policies and procedures, and on-site audit will help the continued improvement of the sector. It is an audit to show that the businesses are doing what they need to do and what they say they do i.e. are they "walking the walk" rather than just "talking the talk". The plan is for this to programme to be extended to CSA members in due course.

The CSA has well-respected complaints handling processes

- All complaints received by the Association against any CSA or DBSG Member Company are investigated individually, and a detailed response provided to the complainant.
- Any breaches of the Code of Practice are dealt with directly with the member and the appropriate action taken. This may include a requirement for staff to undertake retraining through the Association, suspension of Membership until the breach has been remedied and steps are taken to ensure future compliance, and in more serious cases, termination of Membership.
- In the case of termination, the Association will report the termination to the OFT, together with an explanation as to why the membership has been terminated. The OFT may then decide to carry out their own investigation into licence fitness.

The CSA and DBSG work closely with the OFT, and other Regulators of our Industry

- As a key Industry Stakeholder, the Association meets regularly with the OFT to discuss areas of concern, gain understanding, and share insight.
- The Association is liaising with the OFT on their current review of the OFT Debt Collection Guidance, which has been in place since 2003, and based on the CSA's own Code of Practice.
- Working closely to ensure compliance, and to assist in improving standards within the Industry, the CSA and DBSG, in association with the OFT, have recently produced a guidance note on the format, content and timing of standard debt collection letters. This being the first ever joint guidance released, the OFT have expressed their delight that the guidance is proving highly successful in raising awareness, and improving standards.

- The Association also works closely with The Information Commissioner's Office (ICO), and recently produced a Consumer Factsheet in relation to tracing activity, which was fully supported by the ICO.
- Our Members work within the strict guidelines set by the Financial Ombudsman Service (FOS) DISP rules, and we liaise regularly with the FOS to discuss trends.

One of the key strengths of the Association is being able to give informed and accurate compliance advice to its members

- The Association has a dedicated resource of compliance experts, both in-house at Head Office, and sitting on the Board of Directors. We hold specialist Compliance Meetings, which are often attended by the Industry Regulators, and these meetings provide updates, support, guidance and interpretation of regulation, legislation and guidance.

The Association is launching a new Data Gathering Initiative in June 2011

- We appreciate the importance of being able to present statistics and figures to regulators and government but like most trade associations, we struggle to obtain accurate and complete data. Therefore, we have introduced mandatory data gathering whereby data will be collected on a quarterly basis by an external independent third party, held confidentially and with summary analysis being available to those requesting data on the Industry, e.g. through consultations or media enquiries.

Everything revolves around Training and Education

- Running annually, the CSA boasts a City & Guilds accredited Diploma Course for the Debt Collection Industry. Now in its 11th year, the Diploma has grown from strength to strength, showing evidence of commitment, ethics and professionalism within the Industry.
- The Association also produces bespoke training opportunities for Members and non-members, most recently delivering a highly successful course in association with The Samaritans.
- Plus of course, the Collector Accreditation Initiative referred to above.

The Association recently changed its rules to allow firms to become members of the CSA in their first year of trading rather than having to wait for 2 years of trading

- Prior to this, the Association would only accept firms as members if they could establish a trading history and show they were fit to trade in the industry. The new membership is called "Foundation Membership", as the Association wants to ensure that as many firms as possible are supervised by the Association, sign up to the Code of Practice, and benefit from our guidance and expertise. Working within a complex regulatory regime can often make running a business seem complex or difficult, and the Association is keen to assist all participants in the market adopt strong compliance strategies.

Social Media – or the modern version of the advice from 'the bloke down the pub...'

- Engaging with the various Consumer website forums, the Association aims to dispel some of the myths around debt collection activity, and assist those consumers in genuine financial hardship find the right solutions, without being caught up in the claims management arena where consumers are often misinformed.

6. Full Response to Questionnaire

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

As far as this is set out yes. However, as set out above, there are significant concerns that the whole lifecycle of an agreement has not been considered, such as the regulation of arrears and collections as there is no reference to debt collection or purchase.

2. 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?

The consultation fairly highlights the problems arising due to the split between OFT regulated business and FSA regulated business. It should also be remembered that there are agreements which are regulated by both the OFT and FSA as they contain more than one product.

3. 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.

This fails to address the risks to the industry. There is an entire claims management industry riding on the back of PPI, but not all PPI policies were mis-sold.
What is the "appropriate outcome" for consumers? It appears that the consumer has been removed from the equation leaving only the industry and the regulators to state what they believe to be an appropriate outcome for consumers. There needs to be empirical evidence of what is an appropriate outcome for consumers.

With reference to inconsistent and duplication of regulation, this does currently cause problems for the debt collection industry. For example, the principles of TCF which were clearly designed for creditors dealing directly with consumers. As many of our clients are bound by these principles we also have to adhere to them, but although we embrace thee the concept of fair treatment, the wording of the TCF principles does not fit with debt collection activity. However, clients insist on applying each of the outcomes to every interaction we have with a consumer rather than looking at whether the particular interaction was fair on the particular circumstances of collection. Similarly debt collection is within the consumer credit jurisdiction of FOS who do not follow settled law. Although the FOS was never designed to do this, it has produced a large degree of uncertainty which has to be priced in to the cost of financial products.

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

Essentially yes. However, we would ask that the concerns we have highlighted in this response are taken into consideration as we believe the consultation paper sets out a restrictive a view of the industry, for example are ancillary credit businesses, such as debt collection and purchase sufficiently considered?

5. 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.

We are not sure if a unified regulatory regime can be achieved given the diversity in the market and even if it can, as highlighted in our comments above, this could lead to lack of clarity or coherence if rules are not drafted to deal specifically with different sectors within the market. We urge the Government to ensure that different rule books are designed to address this issue and that the Association is involved in drafting the rules rather than having inappropriate regulation imposed on it which would be backward step for the industry and consumers.

6. The Government welcomes views on the role of institutions other than the OFT in the current consumer credit regime, and the benefits they may confer.

If these other institutions are to have input to the regulatory environment then it seems sensible that they are controlled via the CPMA (FCA). We have already commented above on the FOS.

7. 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.

There is already an excellent level of consumer protection under the current regime. We would urge the Government to give careful consideration given to the way in which the current FSMA-style regulatory principles would be applied to our industry. The rise in Claims Management Companies who have made a whole industry in wholesale challenges of such things as the validity of credit card agreements, shows that care must be given when drafting regulation to ensure that it achieves its aim without also creating unintended consequences which enable consumers to avoid paying their debt due to e technicality. When responding to consultations on new legislation, guidance etc we view this from a "debt avoidance" perspective in order to try and reduce this. If this is not considered, the end result of not being able to collect money where previously we could do so quite legitimately, will be either reduced credit or increased charges to all. An example of a provision being used to avoid paying is within sections 77-79 of the Consumer Credit Act 1974, which enables a consumer to request a copy of their credit agreement and statements at any time. If the creditor does not provide these within 12 days, the agreement becomes unenforceable and can only be enforced when the request is fulfilled, regardless of whether the consumer accepts that the debt is theirs or has been paying prior to this or not. Such a request is a standard request in the collection arena and is allowing many consumers to avoid paying legitimate debts. The purpose of these sections was to provide information to a consumer during the term of the credit agreement, which is a good thing, but the ability to avoid paying is the unintended consequence.

8. 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 costs and benefits of considering extending FSMA-style conduct of business rules to a wider group of SMEs.

This is not within the scope of the Association.

9. 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.

The debt collection and purchase industry is already used to reacting quickly to changes as the most relevant "regulation" is provided by the Guidances from the OFT and the Association's Code of Practice. We also have to react to and adopt creditor polices, rules and guidance as these change e.g. TCF, the Lending Code, FOS and creditor specific policies. Generally, firms will have to be more reactive to changes and ancillary credit businesses, which currently do not have reporting requirements, will have to develop more complex compliance monitoring functions in order to report back to the FCA under an FSA style regime.

It is unclear if something akin to the approved person's regime will apply across all areas of consumer credit, and if it does this will add an increased burden to businesses.

Funding is also unclear at this time, but as the OFT licensing fees are less than the current FSA fees this might lead to a reduction in the number of firms operating within the consumer credit market.

Consumers may benefit from swift corrections to the rule books thereby reducing consumer detriment, but any changes would need to be fair and proportionate. Any reduction in the number of firms operating will result in less competition and this is likely to impact on the charges to consumers. It is not unusual for increased fees to be passed onto consumers via higher prices for products.

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

The impact of an FSMA style supervisory approach will place additional burdens on firms with regular reporting, Governance systems and controls to be put in place. As we hope we have highlighted in this response, there is already significant consumer protection and a high emphasis on compliance in the debt collection and purchase industry, and therefore it is unclear whether a FSMA-style supervisory approach will improve consumer protection. In fact, as set out above, if there is indirect regulation of our industry via the use of appointed representatives, we believe this will be a backward step and result in consumer detriment. It appears that there is a balance to be struck between the extra burdens and any additional benefits that may be derived as a result.

11. 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.

This is not within the scope of the CSA.

12. 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 1)?

Transferring consumer credit regulation to the FCA may result in clarity, coherence and improved market oversight; however the certainty of the current regime will be lost. The new regime may be flexible and should lead to appropriate consumer protection eventually. However, it is difficult to appreciate how this would be achieved for the ancillary credit businesses as they do not appear to have been fully considered within the consultation. We stress again that there would need to be different rules covering the various sectors of the industry and that a single firm may need to follow different rules and therefore the actual level of complexity for a firm may increase. A firm will have to consider if it is commercially viable to continue in business if they have to switch from the current regime and generate ongoing reports to the FCA and pay FSA style fees. This could result in an increase in the number of unregulated firms in the industry, operating outside the regulatory regimes which would be detrimental to consumers.

13. 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?

This is not within the scope of the CSA.

14. Are there specific issues that you believe the Government should consider in assessing the merits of Option 1? How could these be addressed in the design of a new regime as proposed in Option 1?

Please refer to sections 1 to 5 within this consultation response which provides further detail on the areas we believe Government should consider.

15. If you do not agree with the Government's preferred option 1, do you have 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 2?

Whilst Option 1 is the option supported by the Association and its Membership, we would ask you to consider the content within sections 1 to 5 within this consultation response.

16. 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 examples quoted in 3.6 are not usually associated with ancillary credit services such as debt collection. It is difficult to envisage how these provisions would apply to such businesses, and we have provided comments in the sections above. As an example we would question why a debt collection business which does not take deposits or hold consumers' monies, would need to be subject to prudential rules?

17. Do you agree that statutory processes relating to 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 regulation under a FSMA-style regime?

A risk based approach is similar to that of the current OFT licensing regime, and one which the Association and its members are used to working within. However, a differential approach to fee arrangements for the ancillary credit businesses needs more careful thought. It is suggested that any fees should be based on the amount of monies recovered and or turnover of the firm as this would encourage light touch regulation.

As highlighted within this document, 80% of the Association's Membership are small to medium sized enterprises, with staff employed of no more than 20. We envisage the cost of compliance to the FSMA-style regime will be far greater than that of the OFT's licensing regime, and it should be strongly considered that such high costs (which will include the cost of authorisation, the cost of reporting and the resources required to undertake this, the cost of systems changes etc) could place many of these smaller businesses in financial jeopardy, and ultimately closure, leading to redundancies, and a higher risk of individuals being placed in financial hardship as a result.

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

Turnover would be one of the factors to be considered in relation to fees together with monies recovered could also be a useful factor in assessing a fee. Eventually the percentage of complaints compared to cases handled might be a factor to take into account.

19. The Government welcomes: evidence relating to experiences of a) the current appointed representatives regime;

This is not something the CSA has particular experience of in our sector, but we draw your attention to our comments on appointed representatives in sections 1-5 above (see particularly section 4) and our response to question 12 above.

b) 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;

Any appointed representative would need considerable indemnity insurance. An appointed representative might not be suitable for high risk credit businesses as this would in effect result in indirect regulation whereas the debt collection and purchase industry is currently directly regulated under a stringent compliance regime. An example of the problems of indirect regulation via creditors is given in our response to question 3 above re the application of TCF principles.

c) evidence relating to the implications an appointed representatives regime might have for firms and consumers.

See the above responses. Any appointed representative would not be a consumer champion, they are there to persuade a firm to be compliant.

20. 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.

Group licences are out of scope for the Association to provide comment.

21. 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).

Although not a lending code, The CSA Code of Practice is a well-developed and respected industry code for the debt collection industry and in fact the OFT Debt Collection Guidance is largely based upon the CSA Code. In this case at least, the regulatory expertise has been proved to lie within the trade association. In order to retain that expertise, it would seem a good idea to either base a rule book on the established code or delegate some level of responsibility to the trade association.

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.

It is unclear whether an activity such as credit reference needs to be licensed. There is little consumer detriment from this activity and it is unclear how licensing adds to this activity.

23. 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?

This is not within the scope of the CSA.

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

Existing agreements may need to be managed as though the Consumer Credit Act 1974 remained in force. As the agreements were constructed under this Act with certainty it would be unfair to impose additional requirements upon creditors who hold existing agreements. The FCA is a conduct regulator and therefore should have the capability to oversee existing agreements.

25. 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.

There are many different licence categories and we suggest it is reasonable that we only comment on debt collection and purchase licences required by our members. It is suggested that either existing licensees are grandfathered into the new system or the current licences are allowed to run their course and then the business applies to the FCA for authorisation under the new system.

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

The fee structure and the level of fees needs to be published so that businesses may plan for these fees, which are assumed to be higher than the current OFT set of fees. How such fees are to be calculated should also be considered. Is it to be based on turnover? Is such an approach sensible for every type of business that is to be regulated under the new regime? Should reduced fees be applicable if for example only relatively few complaints are received against a business when compared to its turnover or the number of accounts it administers? The trade association model could be considered where the larger companies effectively subsidise the smaller for the greater good of the industry.

27. Are there other factors the Government should take account of in considering transitional arrangements?

It is believed that further thought should be given to ancillary credit businesses such as debt collection and purchase and other areas regarded as high risk credit businesses by the OFT. Are such businesses to need closer supervision by the FCA?

28. The Government would welcome evidence on the experience of firms, consumers and their representatives in relation to similar previous transitions, for example the extension of FSA jurisdiction to new markets since 2000.

The Association has members and employees who were involved with the regulation of the life assurance industry's transition into regulation in the late 1980's. The most appropriate comment to make about that market is that there was at the time very little if any representation by a body such as a trade association and the industry did not possibly represent itself well enough at the time facing the prospect of a new and unknown style of regulation. There were no real trade bodies and no help for a new regulator trying to get to grips with a market operating under a much softer OFT regime at the time. Contrasting that with today, and in particular the debt collection and debt purchase industry, much of what was missing in the late 1980's is in existence today – the Association works closely and effectively with the OFT and we believe that this relationship should not be lost as there is a much better chance of reaching a satisfactory and proportionate, but effective regulation regime working with the CSA and DBSG as evidenced over recent years working closely with the OFT.

Appendix

Glossary of facts and figures about the Association

- The CSA and DBSG have over 338 members, all of which are companies within the debt collection arena.
- Around 90% of the collections organisations in the UK are members of the CSA.
- Most of the largest debt purchase companies in the UK are members of the DBSG.
- An estimated 25,000 persons are employed by member companies in either a full or part-time capacity.
- Around £15bn to £20bn pounds annually is referred to CSA members for collection.
- DBSG Members reported debt purchases at their peak in 2007 of around £7.5 billion.
- This represents some 22 million individual debt cases.
- Our members carry out around 15 million trace actions per annum
- We estimate our members return around £2bn per annum to the economy – money that would otherwise be written off.
- 20% of members also collect internationally.
- A number of members are part of large international corporations.
- Typically, in the consumer sector, clients of CSA members are the High Street Banks, Building Societies, Credit Card Companies, Finance Houses, Utility Companies, Local Authorities, Government Agencies, Universities, Health Authorities, Telecommunication Companies, Mail Order Houses and in the B2B sector, large national and international industries as well as a multitude of the Small to Medium sized Enterprises.
- The Association produces regular market surveys and is often consulted by press, TV and radio.
- The CSA is a founder member of FENCA, the Federation of European National Collection Associations and has assisted in respect of relevant past and current EU consultations.
- The CSA is a member of the Money Advice Liaison Group (MALG) which promotes a better understanding between creditors, their agents and consumer groups.
- The CSA and DBSG work closely with the Office of Fair Trading, OfCom, The FOS, the ICO, and has excellent dialogue with BIS, HM Treasury, the MoJ, producing in some instances jointly underwritten guidance and best practice documents.
- CSA and DBSG membership is not a pre-requisite to be able to trade in this industry, but most creditors demand membership to be able to work for them.

Glossary of facts and figures about the Industry

- Total UK personal debt at the end of January 2011 stood at £1,452bn.
- Individuals currently owe more than the entire country produced in the year between Q4 2009 and Q3 2010.

- Total lending in January 2011 rose by £1.5bn; secured lending increased by £1.8bn in the month; consumer credit lending decreased by £0.3bn.
- Total secured lending on dwellings at the end of January 2011 stood at £1,240bn**.** The twelve-month growth rate remained unchanged at 0.7%.
- Total consumer credit lending to individuals at the end of January 2011 was £212bn**.**
- UK banks and building societies wrote off £9.7bn of loans to individuals in the 4 quarters to end Q4 2010. In Q4 2010 they wrote off £2.27bn (£1.18m of that was credit card debt). **This amounts to a write-off of £24.88m a day.**
- 337 people every day of the year will be declared insolvent or bankrupt. This is equivalent to 1 person every 59 seconds during a working day.
- 1,603 Consumer County Court Judgements (CCJs) were issued every day during Q4 2010 and the average judgement amount was £3,245.
- The average person will save £2.73 every day.
- Citizen Advice Bureaux dealt with 8,004 new debt problems every working day in England and Wales.
- The average cost of raising a child from birth to the age of 21 is £27.50 a day.
- 1,000 people are seeking some form of formal debt rescheduling every working day.
- 87 properties were repossessed every day during Q4 2010
- 474 new people became unemployed for more than 12 months every day during the 12 months to end December 2010.
- 1,589 people reported they had become redundant every day during 3 months to end December 2010.
- £145,200,000 is the amount that the Government Public Sector Net Debt (PSDN), including financial interventions, will grow today (equivalent to £1,681 per second).