6 January 2011

Email: Financial.reform@hmtreasury.gsi.gov.uk

Financial Regulation Strategy
HM Treasury
1 Horseguards Road
London
SWA 2HQ

Dear Sir

I respond on behalf of S&U Plc, of whom I am the Chairman. S&U Plc has been in the home credit and motor finance business since 1975 and 1999 respectively. Before that from 1938 it engaged in home credit and mail order as well as disparate manufacturing and mail order activities. S&U Plc is currently quoted on the Stock Exchange and is the second largest participant in the home credit market by profitability.

These responses will primarily relate to the home credit market since this sector is currently regulated by the Office of Fair Trading through the consumer credit regime, whilst Advantage, our motor finance business, is already regulated by the FSA. Hence, changes preferred by the Government in its Consultation Document will primarily affect our home credit business.

S&U are members of the Consumer Credit Association, from whom you will no doubt also be receiving a response. I am on the Executive Committee of the CCA and Chair its PR Committee. However, these responses are solely those of S&U Plc.

General

Whilst S&U complies with, and supports, the recent plethora of legislation in the consumer credit field (soon to be supplemented by the Consumer Credit Directive) we have some doubt as to whether “stronger protections for consumers”, particularly in the home credit industry, are now necessary. Reports of customer satisfaction are extremely high in home credit whilst evidence to the Competition Commission during its inquiry into the industry in 2006 proved that, unlike other areas of consumer credit, the home credit industry did not take advantage of an era of loose credit to increase the debts its customers owed.

Furthermore, we have no doubt that the recent introduction of Debt Relief Orders, and the tendency of many consumers to make bankruptcy a lifestyle choice rather than a financial last resort, have significantly increased costs in the home credit business. The result of this misuse by some consumers, of what were meant to be necessary protections for vulnerable consumers, has seen an increase in bad debt risk for the industry, the cost of which will inevitably passed on to paying customers. Such costs are compounded by the activities of generally unregulated Debt Management Companies who see it as their business to encourage certain consumers to abrogate their responsibilities and to set up debt repayment programmes which usually exclude these consumers from access to future credit as well as increasing costs and hence prices in the consumer credit industry generally.

We therefore argue that any changes to the regulation of the industry should concentrate as much on “removing unnecessary regulatory duplication and burdens for business” as upon stronger protections for consumers. We appreciate that politically this is a difficult case to make but it is important nonetheless.

We would therefore be very concerned as to how non-issue monitoring of the FSA, against monitoring on the basis of specific issues by the OFT, would work in practice. Currently the OFT regime is rigorous, flexible following the introduction of the Consumer Credit Act 2006, and concentrated on **specific** areas of consumer detriment. Many of the companies in home credit would therefore be concerned as to the demands made in general terms by the FSA in terms of business plans, capital rejections and requirements and so on. In particular, we welcome clarity on what “proactive supervision” by the FSA is likely to entail. We would like to know what guarantees the industry has that a CPMA Regulator would ensure that appropriate cost benefit analyses of consumer credit rules would actually take place. Further, we have some concerns as to whether regulation would be consistent if it is based on rules, as opposed to legislation, the latter being capable of scrutiny by the courts. Flexibility and speed of response should not reduce consistency.

Subject to the above, our view of Box 3A on the suitability of a FSMA style regime for different categories of consumer credit business is favourable. It **is** illogical that different consumer credit types (i.e. lending and deposit taking by banks) are subject to different regimes. Nevertheless a proportion of consumer credit regulation is inevitably going to be legislation based as a result of the Consumer Credit Directive and the demands it makes. Further, if the CPMA is under a duty to **continually review** consumer protections, and has the ability to make changes as a result of rules, this may well lead to uncertainty and hence a lack of innovation in terms of new products or services for consumers.

This may well be compounded (2F) if the CPMA “will have a greater appetite to intervene” than the OFT currently has. Again, an excessively activist approach could well lead to knee-jerk initiatives, hasty and poorly thought through, which may be both unjust and increase costs within the industry.

Proportionate Regulation

It is suggested (3.8) that the CPMA operating under an FSMA regime would require “adequate resources” with the implication that its activities will be much more intensive and intrusive as a result of regular monitoring than is the current period based OFT licensing regime. We suspect that the scope of potential audits will be much more draconian than is presently required thus increasing costs and potentially driving many home credit members out of the industry.

Although in (3.12) it mentions that “ a new approach to financial regulation” will require cost benefit analysis on the introduction of new rules and regulations, this is subject to the caveat that such analysis will not be required if “it would prejudice the interest of consumers”. We are concerned that this might be a Trojan horse to effectively deny the industry a cost benefit analysis in virtually every area where consumer detriment is found.

(3.15) - The home credit industry has been subject to a huge amount of regulation and investigation in the past decade. These include the new Consumer Credit Act 2006, the Consumer Credit Directive 2009/10, a Competition Commission Inquiry (2006-2008) and Reviews on Irresponsible Lending and High Cost Credit. The results of these enquiries showed that although home credit came at a ostensibly high cost, its service loads, repayment flexibility and certainty in terms of interest rates meant that value to customers was very comparable to others in the consumer credit industry. Further, its satisfaction levels were much higher and the level of complaints to the current regulators at the OFT were very much lower. We are therefore concerned that in adopting a “risk based approach” (3.15) that the CPMA does not automatically see home credit as higher risk and its customers as vulnerable. What assurances can you give on this?

Our concerns about this are heightened by (3.20) a statement that fee arrangements would have to reflect “increased costs ….. with improvement in the regulatory regime”. We would argue that there is no such correlation since in the case of home credit, sensible regulation can mean some de-regulation and greater reliance on a voluntary code to back up a rigorous licensing regime. Indeed, we strongly agree with the point in (3.33) that voluntary codes should be required of all sectors of consumer credit industry and should be subject of CPMA confirmation. However, these voluntary codes would best work in a climate of de-regulation (3.g) which should be a prescribed and transparent aim for the CPMA

Transitional Arrangements

S&U Plc

Whilst agreeing in principle with the idea that consumer credit firms (4.13) must "comply with CPMA requirements in respect of their existing agreements" it would be wrong for both consumers and lenders to be faced with a completely different set of rights and responsibilities as a result of the introduction of CPMA compared to those that they anticipated when they entered into the transactions. The last sentence in (4.13) seems to concur with this as does the first in (4.14).

In the same way [4c] and particularly since the Consumer Credit Act 2006 now time limits Credit Licenses, it only fair that old CCA Licenses would be assumed to have validity under the new CPMA regime until they expire. Then any demands made by the CPMA renewals they wish to make should apply from the date of renewal.

Conclusions

Although we think that a FSMA based regime under a CPMA would have significant advantages in terms of flexibility, speed of response and practicality for a fast changing industry, any change should not be at the expense of clarity and, most important of all, consistency. Most important of all we believe that amalgamation of the two regimes does provide a significant opportunity to co-ordinate, clarify and reduce the burden of unnecessary regulation and duplication that is currently imposed upon the Consumer Credit Industry. Hence, we would argue that during the transitional period a Working Party be set up, under the auspices if necessary of the Government's De-Regulation Task Force, to see how a new rules based regime could reduce regulation whilst at the same time maintaining, where appropriate, consumer protection and education.

We would be happy to discuss any of the above submission with your representatives.

Yours faithfully

Anthony Coombs

Chairman

S&U Plc

CC: Jack Bennett – Director CCA

Chapter 1

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

Broadly agree.

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?

I don't agree that consumers are confused by the separate regulation of credit and financial services. There is a clear need for two separate systems. The relationship between a creditor and a debtor is very different from that of between the provider and user of a financial service and as such merits a different form of regulation.

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.

When a consumer enters into a credit agreement they place themselves in a vulnerable position and their relationship with the provider of that service needs monitored and controlled. Consumers often do not understand the true cost of the credit agreement or how it relates to the purchase of any associated goods or services. This lack of knowledge and understanding requires a strong regulatory framework to ensure that consumers are properly protected.

One of the key provisions under the current regime is the offence under Section 39(1) of the 1974 Act. This makes it a criminal offence to operate a credit business without the requisite licence. This offence is essential to the work of the Illegal Money Lending Teams which operate across the country. All of the prosecutions taken in Scotland against illegal money lenders have been under this Section. These prosecutions have resulted in prison sentences totalling over 2 years and have allowed over £250 000 to be recovered under the Proceeds of Crime Act. Perhaps more importantly the investigation of offences under this section has resulted in over £400 000 of illegal debts being written off. If the offence of operating a credit business without a licence was removed it would make the work of the Illegal Money Lending Teams impossible. Whilst there may be on occasion associated other criminal offences this offence is essential. It is a matter of fact whether someone does or does not have a licence and is therefore much easier to evidence than subsidiary offences such as extortion and harassment. The majority of illegal lenders do not posses licences not because they find the regulatory system burdensome and confusing but because they have no wish to operate within the law. They are unwilling and often incapable of providing consumers with sufficient information for them to see the true cost of their credit. They rely on a relationship that is heavily biased in their favour to ensure that their clients pay their debts often at outrageous rates of interest.

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

I do not agree that the consumer credit regime should move to a rule book system this would be inappropriate because of the disadvantage that consumers are at when they enter into a credit agreement. Strong regulation is required to stop businesses exploiting this relationship. Recent years have seen a huge increase in the use of high cost legal lenders such as those offering pay day loans. Even within the current regulatory system consumers are being exploited by such lenders and are finding themselves being allowed to get into a situation of over indebtedness that they cannot deal with.

The move to a rule book system would potentially allow organised crime groups to start operating in this area. Up until now it has been difficult for such groups to enter this area due to the licensing regime and the associated checks. Moving to a rule book could allow such groups access to this sector which they could exploit for money laundering purposes.

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.

Whilst a unified regime may lead to better clarity and coherence I do not accept there would be improved market oversight. The current relationship between the OFT and Trading Standards allows the credit sector to be well monitored throughout the entire process of applying for and operating under a credit licence. There is a significant difference between dealing with credit and providing a financial service

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.

Trading Standards as a whole provide an essential role within the current regime. They are responsible for the day to day monitoring of the credit sector and are essential in gathering information and complaints about how companies with credit licences operate. In particular the Illegal Money Lending Teams do vital work by investigating and prosecuting illegal money lenders. Before the Teams were set up in 2004 practically no work was done in this area and illegal money lenders were allowed to operate with impunity. Illegal lenders have a significant detrimental affect on the areas in which they operate. The 7 Illegal Money Lending Teams which operate across the country have had significant success

- Over 1,700 illegal money lenders have been identified.
- Over 500 illegal money lenders have been arrested.
- The Teams have written off over £37 million worth of illegal debts.
- The Teams have secured over 182 prosecutions, resulting in prison sentencing totalling over 107 years plus one indefinite sentence for public protection.
- The Teams have helped over 16,000 victims of loan sharks including the most hard to reach individuals.
- Over £20 million worth of assets are being investigated (under POCA) with the intention of removing these from illegal money lenders.

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 immense benefit to be gained by retaining the criminal offence of operating a consumer credit business without a licence. The retention of the offence would allow the illegal money lending teams to continue with the work that they have been doing for the past six years. The removal of such an offence would make the work of the teams virtually impossible and would make it easier for lenders to operate at the margins of acceptable practice. The lenders investigated by the teams would no longer be illegal simply by virtue of the fact that they did not have a licence there would require to some other associated criminality. If there were no dedicated teams to investigate the type of lender who ruthlessly exploits their clients then it is likely that these lenders would never come to the attention of an enforcement body so would be allowed to operate with impunity.

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.

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.
It would allow changes to be made in reaction to a change in the market and the products on offer however, this flexibility is offset by the loss of effective consumer protection.

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 supervisory approach is unsuitable for ensuring effective and appropriate consumer protection largely because of the imbalance in the relationship that exists between a creditor and a debtor. Having entered into a credit agreement with someone a consumer has no ability to walk away from it if they are unsatisfied with the service that they are receiving. This lack of mobility puts the consumer at a great disadvantage and to ensure that they are properly protected there requires being a prescriptive regime which is effectively controlled and monitored.

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

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)?
No the removal of the offence of operating a consumer credit business without a licence would be extremely 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?

I do not believe that the provision of credit and some of the associated services can be considered as equivalent to the provision of a retail financial service and as such do not believe that there is one regulatory scheme that can fit all.

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?
How would the Government deal with what are currently illegal money lenders under option1? A new regime could maintain the criminal offence of illegal money lenders allowing the Illegal Money Lending Teams to continue to operate and effectively deal with providers of credit who have no interest in complying with the law and providing a fair and appropriate service to consumers.

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?

Chapter 3
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.
Would the fitness of persons to conduct such a business be considered?

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?
No

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

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.

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.

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.

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.

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?

Chapter 4

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

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.**

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

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

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.

CONSUMER PROTECTION & MARKETS AUTHORITY
[Financial Conduct Authority]

From: **SECURITY FUNDING 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 Security Funding Limited on "a new approach to financial regulation: consultation on reforming the consumer credit regime".

Security Funding 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
Security Funding Limited provides short term bridging finance to individuals and small businesses wishing to purchase properties in need of renovation or land for new build including social housing. Security Funding Limited employs 5 people and further regulation such as that proposed would require an increase in staff which could not be accommodated in our present office, which in turn would involve additional expense in an economic climate where many small businesses are finding it increasingly difficult to survive.

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.

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 and short term bridging 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

Kenneth Johnson
Managing Director

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13 Summers Way
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A New Approach to Financial Regulation - consultation on reforming the consumer credit regime.

This response to the HM Treasury & BIS Consultation paper, entitled: - "A New Approach to Financial Regulation- consultation on reforming the consumer credit regime." is a personal response as a consultant within the credit industry.

In my view this Consultation Paper is completely correct in its assumption that there is a serious anomaly at the moment between the regulation undertaken by the Financial Services Authority and The Office of Fair Trading in the field of financial services. It is extremely confusing for the consumer let alone for the industry itself.

Although the paper offers two options I get the strong feeling that although the paper states Government's preference is for the regulation to be passed to the Consumer Protection Markets Authority (CPMA), once it is created, this is more than a preference and will be the way forward. My evidence for this is the announcement on 26th January by the Minister, Mark Hoban that transfer of the regulation of new and existing second charge residential mortgages will pass from the Office of Fair Trading (OFT) to the Financial Services Authority (FSA), to ensure consistent standards of consumer protection and simplify the regulatory environment for lenders and borrowers.

As by far the majority of these mortgages will be governed by the Consumer Credit Act 1974, the transfer of regulation has already begun so to speak.

I agree that this anomaly must be resolved and I agree that probably the best and only way of doing this is to repeal the Consumer Credit Act, review its requirements and build those that remain relevant for consumer protection into a new Rule Book. To my mind, having worked with the Consumer Credit

Act since its enactment, I believe it has served the industry very well, but it is probably time to take this opportunity to review the legislation as a whole rather than piecemeal which the 2006 amendments tended to do. However dramatic a change it will be, and the Paper correctly acknowledges the scale of this operation, the change of regulation should be used to bring all consumer protection requirements up to date, attempt to predict the future and ensure a Rule Book which indeed is far more flexible than primary legislation comprehensively brings all consumer credit regulation into the 21st century and ensures it is fit for purpose now and for a further few decades.

Such a drastic change will not be universally popular as we British dislike change, but change is at times good for us and I commend the courage that this Government is considering taking in this highly complex field.

The Office of Fair Trading in my view has done a very good job over many years as the industry regulator for Consumer Credit Act regulated agreements. Its new powers bestowed upon it in April 2008, made it probably the most powerful regulator in the consumer protection field. In general I believe the OFT has used these powers sensibly and in a balanced way. Similar powers should be passed to the CPMA but they must equally be handled very carefully. Abuse of power is often seen and experienced in all walks of life and legislation must try to prevent it. Government always will be tasked with striking a balance between business and the consumer.

I therefore support Option 1 laid out in this paper and if I can be of assistance in any such changeover, I would be pleased to be involved.

Anthony Sharp
28.1.11

Sir / madam,

Please treat this as Shergroup's response to your current consumer credit consultation exercise.

Our response is limited to the issues raised under objective 2 – with particular reference to paragraph 2.12 and question 8 – as these raise the issue of most particular interest to our specific area of work.

Response

Objective 2 – Paragraph 2.12 and Question 8

Objective 2 refers to ensuring effective and appropriate consumer protection. We would be concerned that in working towards such an objective, the Government does not go too far in this respect and as a result deny creditors with effective and appropriate methods of enforcement against those people who, having entered into an agreement, do not meet their obligations to repay the monies owed under that agreement and against whom recovery actions through the courts becomes an unfortunate necessity.

Paragraph 2.12 states that a change in regime may also have an impact on the type of consumers covered by regulation. This will almost certainly have a knock-on effect on how those consumers may be pursued and enforced against should they not meet their repayment obligations.

As the law currently stands, regulated debts may only be enforced through the county courts, and therefore any enforcement action to be taken against the debtor can only be carried out by way of county court bailiffs acting under a county court warrant of execution. Enforcement action cannot be carried out by High Court Enforcement Officers under High Court writs of fi-fa for such regulated debts. (This is as a result of the judgment in the case of Forward Trust vs. Whymark 1979 and the contents of the subsequent High Court and County Court Jurisdiction Order 1991 as amended.)

If the scope of any such regulation of debts is extended, and the number and type of debts subject to such protection increases, this will only serve to increase the number of cases that can only be enforced by county court bailiffs and therefore will also have the concurrent effect of reducing the number of cases that can be forwarded to HCEOs to enforce.

Not only will this have an undue adverse impact on HCEOs and their business, but it flies in the face of what creditors want with regard to who can or cannot enforce their debts, by reducing further rather than extending their freedom of choice as to who may conduct enforcement on their behalf.

Recently the number of warrants being enforced by the county court bailiffs has dropped dramatically. This, we would assert, is because the costs of applying for enforcement by way of such a warrant have increased dramatically whilst the level of success in enforcing such warrants by the country court bailiffs has seen a marked dip. Our customers wish to exercise greater choice in being able to send more of their enforcement work to the HCEO of their choosing to collect their judgment debts on their behalf. They do not want to see that choice being eroded by being forced to send more work to a county court based system that is not providing the service they want and for which they are having to pay an ever increasing fee.

We are aware that the enforcement of regulated debts, and who may enforce such debts, is an issue that the Ministry of Justice will be consulting upon in the near future. We believe that the recommendation MoJ will be putting forward in that consultation is for customer choice to be extended and for creditors to be given greater choice in who enforces their judgments, including regulated debt. We would be most concerned if this was derailed as a result of the consultation exercise HM Treasury / BIS is currently conducting on the future of the consumer credit regime.

We would call most strongly for the results of the review being implemented in such a way that greater protections for consumers do not come at the expense of greater choice for creditors or to the detriment of HCEO businesses.

Thank you,

Chris

Chris Bell
Policy Advisor
Shergroup Limited and Related Trading Divisions

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minding your business

Winners of the Institute of Credit Management's Innovative Solution of the Year Award 2009 for the SHERPA system!

Visit our website at www.shergroup.net to see how we can add innovation to your business process!

[personal details removed]

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CONSUMER PROTECTION & MARKETS AUTHORITY
[Financial Conduct Authority]

From: **Shermin Finance Ltd.**

RESPONSE to

A new approach to financial regulation:

consultation on reforming the consumer credit regime

16 March 2011

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

Shermin Finance Ltd. 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
Shermin Finance are Credit Brokers, and act as a New Business and Administration outsourcing facility for Barclays Partner Finance in the Home Improvement Industry. At present we manage on a nationwide basis, 285 home improvement retailers who offer Barclays partner Finance credit facilities to their customers.
Although a national business we operate from a single site in Kenilworth and currently have 12 members of staff including strategically placed, home base representatives.
The retailers that we support, operate on a regional or local basis and have recently struggled to accommodate and assimilate the introduction of the Consumer Credit Directive. Further overbearing regulation … similar to the FSA treatment of the Insurance and Investment industries … would not regulate but would disenfranchise smaller and medium size retailers and would effectively kill the industry, and associated retailers on a national basis.
Investigation into I.F.A.’s and FSA regulation confirms this scenario.
This proposal is further red tape that is unnecessary, and would destroy an area of business that is Key to the rejuvenation of the economy.

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.

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

Martin Harban
Director.

SCOTSS response to H M Treasury / BIS consultation on reforming the consumer credit regime

The Society of Chief Officers of Trading Standards in Scotland (SCOTSS), is the professional body representing the lead officers for Trading Standards in Scottish local authorities, and welcomes the opportunity to respond to the consultation document on reforming the consumer credit regime.

SCOTSS has contributed to the response which will be submitted by Local Government Regulation, however SCOTSS strongly believes that enforcement of the Consumer Credit Act at local level by Trading Standards is an essential part of the regulatory regime, and provides valuable means of consumer protection and fair competition between businesses.

SCOTSS is also greatly concerned at any suggestion that the criminal sanctions under the Act, which have proved to be effective at tackling the social scourge of illegal money-lending might be removed or diminished. If this were to happen, it would be particularly problematic for the work of the Illegal Money-Lending Unit given that in general the basic offence is the Section 39 offence of operating without a licence. Although the Unit would welcome some kind of offence for aggravated illegal lending the simple offence of operating without a licence is a matter of fact and much easier to prove to the requirements of the criminal court.

Some of the credit issues faced on a day to day basis can be found in the following examples provided by one Scottish authority:

Example 1 Debt Management firm and the need for local enforcement

Trading Standards received complaints from local debt advisers about the activities of a local debt management firm. Officers investigated the complaints and visited the business. There was evidence of misleading activities and an apparent lack of competence by the individuals involved. Trading Standards made it clear that a failure to meet the OFT's Debt Management Guidance could lead to action by the OFT under the consumer credit licensing regime. The outcome was that the business ceased to operate as a debt management business, and local consumers were protected from misleading claims and poor service from this firm. This was a small local firm and best dealt with by local enforcers. OFT were prepared to take action if necessary but needed the evidence from the local investigations "on the ground" by Trading Standards.

Example 2 Debt Collection: Scottish dimension (DAS) and effective work by home and enforcing authority

A debt counsellor complained to a Scottish Trading Standards Service that the debt collecting arm of a large national finance company was contacting one of his clients by phone and by letter, despite that client being subject to a "Debt Arrangement Scheme" (DAS) order. The DAS is a formal procedure for Scottish debtors which prohibits such contacts from the debt collectors and the company had been informed of this in writing. These activities were deemed to breach the OFT's Debt Collection Guidance, and there were further breaches of the guidance in terms of the inapplicability of terminology and procedures used in letters and the bypassing of "appointed representatives". The Scottish TSO investigating contacted the home authority TSO for the company and provided the information (including an explanation of the operation of the Scottish DAS system) for the home authority officer to approach the company. After the home authority officer visited the company, it agreed to change the way it dealt with this debtor and review its procedures vis a vis Scottish debtors to take account of the possible involvement of DAS requirements. Had the company not responded positively, the matter would have been referred to the OFT for possible formal action under credit licensing regime.

Example 3 Debt Collection: bad practices by local debt collection agents; importance of credit licensing system

Ongoing case in Scottish city where two local agents of a medium-sized debt collection firm have been the subject of several complaints to Trading Standards. The agents were repeatedly accused of making overly-frequent phone calls and visits to debtors who also felt intimidated and harassed by their aggressive attitude during these calls and visits. The agents also repeatedly contacted the debtors' employers and former employers. The case is being treated as a potentially serious breach of debt collection guidance which brings into question the fitness and appropriateness of these individuals to be involved in debt collection. On conclusion of the investigation a report will be sent to the OFT.

Example 4 "Log Book" style Loans: Scottish dimension and need for local enforcement; effective joint working with OFT; need for "unfair relationships" provisions

National company offering so-called "log book loans", which are effectively based on security on the debtors' cars. This security is unlawful in Scotland. The company targeted individuals with poor credit ratings and as it was seen to be "taking advantage" of consumers in vulnerable situations, it was deemed to be contravening the "unfair relationships" provisions in the credit licensing regime. After receiving a number of complaints, Trading Standards conducted a thorough investigation and took a number of statements from consumers. Regular contact was maintained with OFT and the completed investigation was passed to the OFT. OFT took action to revoke the credit licence and a tribunal hearing is pending.

Example 5: Section 75 and apparently established and reputable firms

There are many examples of s75 providing useful protection to consumers. One "angle" is to particularly point to situations where a reputable and well-established retailer of large and expensive items goes out of business, e.g. Landmark Furniture Co. The point being that whereas there may be an element of "buyer beware" regarding consumers buying from e.g. on-line ticket sellers of unknown probity, customers of Landmark could have had no reason to predict what happened and particularly “deserved” the protection of s75 if they bought on credit.

Question 3

Whatever the shape of the regulatory regime chosen following the consultation, SCOTSS believes that the key provisions for consumer protection in the current regime include:

a. licensing is a useful consumer protection measure as it excludes those from the market who are found to be unfit or lack competence; the fitness test in section 25 may deter those who know they are unlikely to be granted a licence and also encourages existing licensees to act fairly towards their customers. The fact that agreements with an unlicensed lender or broker may be unenforceable without validation by the OFT also helps protect consumers.

b. the controls on advertising help to ensure ‘truth in lending’ and that consumers are given the information they require to decide on different credit offers; the regulations also help to maintain fair competition between advertisers.

c. the pre-contract and contract formalities are largely dictated by the Credit Directive, and seek to ensure that the consumer is given an opportunity to consider their commitment before and at the time of entry into the agreement.

In many cases where vulnerable consumers have been targeted by high-pressure sales techniques, the consumer has been persuaded to sign a credit agreement for the product or service; often, the trader is reluctant to leave much paperwork to enable the consumer or his/her relatives to consider the contract or exercise their cancellation rights. Where this has been brought to TSS attention, particularly at an early stage, TSS have been able to provide appropriate advice or contact the trader or creditor to have the contract cancelled or amended. In one particular incident, a couple were helped to cancel a double-glazing contract which they had been pressured into signing and could ill-afford, when it was found that the finance company’s documents did not include the correct cancellation notice.

d. the cancellation provisions, now superseded by the Directive’s right to withdraw from the credit agreement allow the consumer an opportunity to reconsider after signature.

e. section 75 is one of the most important consumer protection measures in the Act, and brought into law the policy recommendation of the Crowther Committee that creditor and supplier should have joint liability for any misrepresentation or breach of contract on the part of the supplier. As Lord Hope of Craighead observed in the House of Lords judgement in the OFT case against Lloyds TSB and other banks “Transactions of that kind are to the commercial advantage of the supplier and the creditor. The creditor is in a better position than the debtor, in a question with a foreign supplier, to obtain redress. It is not to be assumed that the creditor will always get his money back. But, if he does not, the loss must lie with him as he has the broader back. He is in a better position, if redress is not readily obtainable, to spread the cost. He is in a better position to argue for sanctions against a supplier who is not reliable. For his part, the debtor is entitled to assume that he can trust suppliers who are authorised to accept his credit card."

TSS find that involvement of the creditor can often assist with the resolution of a consumer complaint where the supplier has previously refused any redress. This avoids the need to commence potentially costly and time-consuming court proceedings.

f. while the right to information and a copy of the agreement under sections 77 and 78 have been abused by some debtors and claims management companies, they nevertheless provide an important element of consumer protection in providing consumers with essential information.

g. default procedures and those relating to the protection of goods supplied under hire purchase agreements ensure that the consumer is given information and an opportunity to remedy the default within the time allowed without a detrimental effect on his credit rating, which can have severe implications for his ability to obtain mortgage or other credit.

h. the rights to a rebate on early settlement, and the provisions relating to termination of hire purchase and hire agreements have proved valuable to consumers in allowing them to end contracts on reasonable terms.

i. time orders offer a consumer an opportunity to apply to the courts for a breathing space in times of temporary financial difficulty.

j. the new 'unfair relationships' sections introduced by the 2006 Act allow the court to review the terms and circumstances surrounding the making of an agreement, and apply a number of remedies. The previous 'extortionate credit' provisions had imposed too high a burden on consumers.

k. section 155 entitling consumers to recover brokerage fees is also a useful consumer protection measure. Consumers unable to obtain credit from 'mainstream' lenders are vulnerable to approaches from brokers suggesting that they can arrange a loan for them with a minimum of formalities.

l. the criminal offence provisions relating to unlicensed trading have proved to be vital in combating 'loan sharks'. In many cases unlicensed credit activity tends to be through ignorance, if for example a business changes from a partnership to a limited company. Normally, if the partnership was licensed under the Act, the company would be advised to apply for a licence and no further enforcement action would be taken, although if consumers were to complain, they and the business would be informed that the agreements might be unenforceable without validation by the OFT. Any evidence of unlicensed money-lending would be investigated or passed to the Illegal Money-lending Unit with a view to prosecution.

Prosecution would also be considered if a licence applicant were to deliberately conceal information or give false information to the OFT in connection with a licence application, if the locus of the offence were considered to be in the local authority’s area. Unlicensed debt-collection activities have previously resulted in prosecution, particularly where combined with other offences.

CONSUMER PROTECTION & MARKETS AUTHORITY
[Financial Conduct Authority]

From: **Stour Vale Finance Co Ltd**

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 Stour Vale Finance Co Ltd on “a new approach to financial regulation: consultation on reforming the consumer credit regime”.

Stour Vale Finance Co 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.

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.
We operate locally in the West Midlands, employing just two staff and providing vehicle finance through local car dealers. Generally, our customers have been turned down by Banks and national vehicle finance providers and we offer a very personal and individual approach to vehicle finance.

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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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
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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

Mrs Julia T Edwards
Director

Response

Background

The Government wants to ensure that the consumer credit regime is fit for the future, flexible and able to keep up with a fast-paced, innovative market.

This consultation, conducted jointly by HM Treasury and the Department for Business, Innovation and Skills, considers the merits of transferring responsibility for consumer credit regulation from the Office of Fair Trading (OFT) to the new consumer protection and markets authority (CPMA - working title). The creation of the CPMA was announced by HM Treasury in July as part of a wider programme to reform the institutional framework for financial regulation in the UK.

The Government believes that transferring consumer credit regulation from the OFT to the CPMA would provide an opportunity to improve significantly the way consumer credit is regulated and to create a simpler, more responsive regime. However, a reform of this magnitude would also represent a significant change for many firms operating in the consumer credit market. The Government will ensure that decisions on whether and, if so, how to bring consumer credit into the scope of CPMA regulation reflect the needs of consumers and businesses.

Current regulatory responsibilities
The FSA is the UK's main financial services regulator. The Financial Services and Markets Act 2000 (FSMA) gives the FSA five statutory objectives, 'including securing the appropriate degree of protection for consumers. The FSA currently has the authority to regulate most consumer financial services and products, including insurance, investments, deposits and first-charge residential mortgages.

The OFT is the UK's consumer and competition authority, with a broad remit covering the whole of the UK economy. In addition to its general powers to enforce consumer and competition law, under the Consumer Credit Act 1974 (CCA, amended both in 2006 and more recently by implementation of the Consumer Credit Directive) the OFT is the licensing authority and main enforcement body for regulated consumer credit, including personal loans and the provision of goods and services on credit and related activities, such as debt collection and debt management.

These two organisations approach their regulatory responsibilities in very different ways, which is largely determined by their respective legislative bases. Under FSMA, the FSA takes an outcomes-focused approach to regulation, setting out 11 principles which govern business behaviour. Alongside this, the FSA has extensive powers to make more detailed rules, such as those regulating conduct of business for investment businesses. These rule-making powers are generally subject to requirements to consult and to conduct cost-benefit analysis, with final rules set out in rulebooks which have the force of secondary legislation.

By contrast, CCA is more narrowly framed. It grants the OFT functions of administering the licensing system, supervising the working and enforcement of the CCA and any regulations made by it, as well as undertaking enforcement action itself. Specific conduct of business rules are contained in primary and secondary legislation under CCA, the amendment of which requires Parliamentary approval and can therefore entail substantial delays. The CCA does not grant the OFT any formal rule-making powers, although it gives the OFT a role in setting standards through powers to issue guidance on how it will exercise its functions under the CCA and on behaviours which it considers will call into question a firms fitness to hold a licence (for example, recently issued guidance in relation to Irresponsible Lending).

Extent of regulatory overlap

There are overlaps in authorisation – it is estimated that 16,000 firms are directly authorised or licensed under both FSMA and CCA. For example, a firm may be authorised and regulated under FSMA for the provision of mortgage advice and arranging insurance and also licensed under CCA to carry on the business of consumer credit, debt adjusting and debt counselling. This can lead to several problems, including duplication of compliance costs and potential inconsistency in regulatory approach, which may lead to uncertainty for business as well as consumers.

However, the degree of overlap is likely to be larger than this. For example, many FSA Appointed Representatives (ARs) – which are not directly authorised but appointed by an authorised firm (a principal) to conduct certain activities on its behalf – also hold OFT consumer credit licences. There are currently almost 30,000 ARs active as retail intermediaries, but it is unknown precisely how many of these will also hold a consumer credit licence. Discussions with stakeholders suggest that a significant proportion may hold credit licences, but due to uncertainties it has been estimated that the total overlap in OFT/FSA-regulated population may be 23,000-52,000 firms. The table below gives some further detail on the extent of overlap for OFT licence holders by area of business activity.

Taking into account both directly-authorised firms and Appointed Representatives, the total FSA-regulated population is around 60,000[11], which implies that 40-90% of the FSA-regulated population are also licensed by the OFT. In contrast, there are around 96,000 extant consumer credit licence holders, which suggests that 45-75% of OFT-licensed firms are not currently regulated by the FSA.

The OFT licence holder population includes a significant proportion of smaller businesses, with just over one-third of the total (approximately 35,000) estimated to be sole traders. Around 12% of all firms directly authorised by the FSA are sole traders and the FSA has previously stated that around 95% of the firms they regulate are small firms.

The wide scope of the CCA means that many licensees are not financial services businesses themselves, as reflected in the estimate that only a relatively small proportion (less than 5%) are actively lending money to consumers. The remainder of the OFT-licensed community may provide access to credit, allow payment in instalments for goods and services, or provide ancillary services such as debt advice or credit reference information. Preliminary estimates suggest that around half of all current OFT consumer credit licence holders are involved in financial services, but not as their core activity. The licensed population therefore includes high street retailers, car dealers and suppliers of general goods and services.

Introduction

What is the problem under consideration? Why is government intervention necessary? Consumer credit is generally regulated separately from the rest of financial services, by a different organisation (the Office of Fair Trading, OFT) and under a separate legal framework (the Consumer Credit Act, CCA). However, there is some overlap with the supervisory responsibilities of the Financial Services Authority (FSA) under the Financial Services & Markets Act (FSMA), which can result in an inefficient allocation of supervisory resources. Many detailed rules governing conduct of consumer credit business are set out in primary legislation (CCA), therefore even relatively small changes require primary legislation. Proposals to alter the regulatory architecture for financial services, including the creation of the consumer protection & markets authority (CPMA), present an opportunity to change the regulatory framework to address these problems.

What are the policy objectives and the intended effects?

In assessing the potential for reform, the Government will be guided by the following objectives: 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 The intended effect is to create a world-class regulatory regime that keeps pace with a dynamic consumer credit market; responds to actual or potential gaps in consumer protection, and places a proportionate regulatory burden on business.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

The 'do nothing' option (i.e. maintaining the existing CCA-based regime) is subject to considerable uncertainty due to proposed institutional changes to the competition and consumer regimes. The potential transfer of existing OFT functions may mean that the OFT would no longer be operating in its current form in the future. Nevertheless, we assume that it will be possible to maintain the existing framework, despite a lack of certainty about the regulatory authority that would have responsibility for the CCA regime. The alternative option (and subject of this consultation) is the regulation of consumer credit under a FSMA-style legislative framework by the CPMA - i.e. legislative change to replace the CCA with a rulebook, which the CPMA would be responsible for writing. The legal framework for the CPMA's powers and functions will be based on the model set out in FSMA, with modifications to enable the CPMA to carry out its conduct-focused responsibilities more effectively. At this stage, the Government believes that this option is most likely to achieve the range of objectives set out above.

There are concerns about how effective the CPMA would be at the grass roots of the credit industry. There are, even today examples of businesses regulated by the FSA failing to comply with even the most basic rules - whatever the structure of the regulator there is a need for officers to understand and advise businesses at all levels. Whether this comes from a rule book or as at present, from the CCA remains in question. The argument about speed of changing direction or of the rules/SI/Act is understood, but whether this is the best way to go is doubted as individual consumers and businesses may not understand the details but, and importantly, they have currently a number of organisations which are well placed to offer advice and assistance to them. The CCA is of course subject to decisions in the Courts and previous cases can provide a high degree of assistance in the giving of such advice and what outcomes the consumer can expect.

Consumer Direct (CD) receive many thousands of enquiries each year from consumers who have bought goods or services on credit and have some issues with their purchase. At present CD will advise the consumer of their rights not only in terms of their statutory (contractual) rights in relation to the goods or services, but also any equal liability issues/other credit practices which many be relevant. The consumer therefore only needs to make one call to obtain all the advice and information they need.

As a result of agreed protocols, the relevant Trading Standards Service (TSS) is passed details of the situation. This can be for further action/investigation in relation to the practices involved, or for intelligence purpose, which may also lead to further action. There is no mention in the proposals of any link with CD or the new advice agency (CAB) and so as things stand this could potentially lead to a consumer having to make at least two calls to different organisations.

Although there is mention of the activities that the new regime could enforce, there is no mention of the consumer advice aspect. If it was the case that consumers are to instead be referred (for example) to the Financial Ombudsman Service (FOS), then this is unlikely to prove satisfactory to most consumers. This is because the current remit of FOS is to only intervene when certain events/issues have take place; for example once the financial body have issued their final response. Many consumers who are currently contacting CD are in the early stages of their dispute, problems that FOS would not currently get involved in at that stage. This could therefore leave a large gap in the provision of advice to consumers at a critical stage.

The proposed CPMA regime seems to be centered on the presumption that a body providing an effective supervisory/regulatory role will somehow also lead to the protection of individual consumers. This is in theory a reasonable assertion but often found not to follow in practice; this has been part of the criticism of the OFT over recent years in that too much time was spent on research in how to regulate markets, and not enough about the day to day impact on the individual consumer.

Specific responses to the questions raised in the consultation.

Chapter 1.

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

Not entirely. The assessment concentrates on the regulatory aspect which is not at the heart of the regime. This is the protection of the individual consumer in their transactions involving credit.

The assessment of the consumer credit market in 1.8 contains points which could be in need of clarification. Reference is made to secured lending being only mortgages and this is not the case. CCA has references to loans being secured on property but is the assumption being made that secured means houses? Hire purchase and conditional sale agreements are secured on the goods being bought.

The consumer credit products listed have all been about from a number of years and the changes may have been the increase in some or all of these in monitory terms as apposed to the credit products themselves. However cheque cashing cannot in any way be considered a Consumer Credit product in terms of the CCA regime. It is a service offered to those who may receive payments by cheque but do not have a bank account to pay in to. There are no loans involved only a charge, sometimes considerable, for the service.

Reference in 1.9 to the increase in Pawn Brokers. The report referred to gives the figure as a best estimate and it is questionable how many of these actually engage in the main in pawn broking. A check of "pawn brokers" in Norfolk in 2009 found despite claiming to be pawn brokers the vast majority of such businesses operated sale and buy back agreements which are outside the remit of CCA. It would be acknowledged that this could be an indication of an increase in sub-prime lending.

It was noted in the comments in the report about the methodology used that many telephone contacts were not possible due to unobtainable numbers. Whilst there is no real evidence such problems may be a symptom of people not wanting their real identity known, such as in the pawning of stolen goods.

In 1.14 reference is made to Trading Standards Services (TSS) and their role. For the vast majority of consumers this the face of Consumer Credit and their work has helped many thousands of consumers.

Few TSS have had the need to resort to prosecutions under CCA and it would be fair to say Consumer Credit issues have not generated the level of enforcement/awareness as some other issues within some TSS. This is partly due to the national context/policy issues discussed above and, particularly, in the area granting of and revoking of Consumer Credit Licenses (OFT). The ability to regulate a trade sector via licensing conditions is potentially a powerful weapon but concerns about the effectiveness of this system has resulted in many cases to more costly and time consuming ways of dealing with a problem trader by TSS.

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?

It is difficult to assess how much this really affects consumers. Both regimes provide consumers with information as to where they need to go for help. The split does mean some businesses may have to work under two regimes but the regimes deal with fundamentally different financial products and to some extent customers. The strength or not of self regulation come down to the individual organisations and how they deal with their members. Consumer Protection remedies may be lacking. It is generally regarded that the OFT should deal with Credit matters, but end up not dealing with anything!

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.

The CCA has eliminated many of the risks that consumers could face. However one area which does continue to cause problems is the miss selling of insurances to cover credit agreements. These can be often not required and there are often questionable verbal claims which the consumer can be hard put to prove. Although a lot of these problems have started to drop off many other insurances remain suspect; GAP, PPI, etc. If a consumer a wishes to purchase a motor vehicle on finance, normally all they want to know is 'how much is it going to cost', they will not worry about the terms/conditions and all the nitty gritty. The draw of the vehicle and driving it away overrides common sense.

Also the deferring of the credit agreement over a period of time which allows the consumer to pay the cash price (sometime with a small fee) by a certain date, often a year from acquiring the goods and thus getting in effect an interest free loan. The time period is such that consumers may forget to pay and find themselves having to pay considerable interest. I believe the OFT acted in this area and many creditors now advise consumers of these dates. Credit Card providers have taken this on board and you will see this on the monthly statements, although some are better or perhaps straighter than others.

Key elements of CCA are the provision of copies of agreements, limiting automatic repossession of goods, steps a creditor is required to take in the case of default, equal liability for creditors for suppliers breaches of contract, and fundamentally the fact that if the provisions are not fully followed it is a creditor who has to take court action to enforce the agreement which may well not be successful.

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

Any wholesale changes to the CCA regime would be unnecessary and counter productive. Equally there is little evidence that the suggested replacement (CPMA) would present any distinct advantages to business or consumers alike; in fact the proposal as currently stands appears to increase the risks involved. We need a more pro-active regime, which as Hampton called a more joined up enforcement system. There is in place an active Trading Standards Department able to cover the Country; all they need is the remit and resources to enforce the legislation.

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.

Retail Financial services cover such a wide and diverse area and have differing needs and pressures that it would be difficult to see how this could be simply achieved by one regime. There would clearly need to be areas of operation to cover all aspect which could lead to conflicting interests within the one organisation. Markets in relation credit and say investments are so diverse as not to really benefit for a single market oversight. What we need is a working Regulation system; less will cause more hardship and the increase in Rogue style traders.

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.

Local TSS often in partnership with Consumer Direct is in effect 'the face' of the CCA to the general public, including business. By advice and assistance they can ensure businesses comply with the requirements including the adopting of best practices as well as assisting consumers in problems they may have. A vast amount of experience is held with regard to the practical application of the legislation. They offer a local presence to the community and work well with partners locally such as Citizens Advice, and are therefore often a preferred point of contact for the OFT or FSA. Through regional and national groups they can provide consistency in approach/enforcement of Consumer Credit issues. Experience with the FSA is that they are quite prepared to pull you up when you do something wrong and very poor to help you put it right. They expect you to do it yourself and that is not always that easy for troubled traders.

If a better and more effective overall body could be established under the CCA regime this would further enhance the effectiveness of TSS and the contributions they make. National, Flexibility and Knowledge – Local Knowledge and connections – Consistency of enforcement, all other legislation checked at the same time; no need for second or third visits from other agencies.

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.

It is difficult to see how the overall level of consumer protection could be retained. There is already reference to the potential for breaching the new rules as not leading to any enforceability issues with credit matters. However in our view this represents a backward step for consumer protection and effectively a green light for any unscrupulous businesses who wish to take advantage of consumers within such a regime. 'Enforceability' is a key aspect of control in this market and its potential removal suggests that the need for consumer protection has been overlooked. Consumer Protection can of course be achieved in a number of ways, and part of this will include action, in various forms, taken by regulatory bodies against those businesses which are not compliant with requirements. However if there is no equally robust protection for individuals, then the aim will have in part failed. CCA has managed to a great extent to achieve this by putting the onus on the business (professionals and experts in the field) rather than the customer. The CPMA approach changes this emphasis, and past experience has shown that many consumers will not be confident/able to take legal action, and thus will be much more likely to suffer detriment. Where should the burden be, on business or consumer?

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.

It is clearly the case that many small businesses suffer from problems in relation to credit and in particular the hire (leasing) of goods. One of the common problems is legal status; thus a 'large' business operating as a sole trader or partnership will gain protection whereas a much smaller but limited (liability) company will not. Also that the protections only goes up to credit extending to £25,000, whereas many transactions fall outside this limit. TSS are often surprised at the poor decisions made by business in relation to this and there could therefore be some merit in bringing a level of business lending under the auspices of CPMA, although 'local' would again be removed which in turn may dissuade those businesses who might benefit from this.

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 (and) 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 central part of existing CCA controls is in fact already a set of rules by which business and to a lesser extent consumers must follow. The move away from purely criminal sanctions in the 1974 Act suggests that it was at that time a leader in this approach. Since 1974 there have been a number of amendments and improvements to this legislation which suggests the existing framework is already flexible and adaptable.

A rules based regime will depend on a number of factors as to its success, not least the extent to which the rules actually cover the day to day activities. High level (generic) rules generally do not assist consumers but instead provide some businesses with room to 'exploit' loopholes. It is the detailed requirements under CCA which have ensured businesses have provided the protections which consumers benefit from, and indeed provide businesses with clarity as to the actions they need to take. They provide consistency. An example is the total charge for credit and the resulting APR calculation. Without detailed rules different business would produce different methods of calculation which would impair consumer choice and lead to consumer detriment. Rules must be detailed to provide both protection and consistency which will benefit both consumers and business.

The ways the rules are enforced or are of benefit to consumers are vital factors. The consultation document does not appear to address this in any detail. Reference is made to the current FSA rule book preventing consumers from taking action, which some may find rather confusing given the need to convey confidence in protecting consumers. It is difficult to believe that a 'self-declaration' type of annual report, sent in by a business, will ensure consumers and particularly vulnerable consumers are protected. Experience from the FSA should benefit the thoughts on this area, but they will need to be extensive and all embracing to fully extend the protection that consumers need in this field.

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.

The simple answer is to leave the protections as they are. The equal liability provisions protect consumers from traders who refuse to help, have gone out of business or are involved in some form of fraudulent activity. The lower financial limit of this liability does prevent abuse of the provision in relation to minor purchases. This should go to ensuring creditors deal with only reasonable traders and provide them with justification to stop business with them.

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)?

The objectives could be more easily and less expensively achieved by actions which are contained in the response to item 15 below and the summary at the end of this response.

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? 14 (and) 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 advantages in truth seem much more balanced towards the interests of business rather than to consumers. There is a lack of confidence that the approach being offered will have any beneficial impact on many involved in this sector. Consideration should be given to the success of the current CCA regime, looking at the reasons why some parts of this may not have achieved what was intended, and address these, rather than scrapping the entire system. If we had received stronger and a more robust enforcement strategy from the like of the OFT then we would have had a stronger and more compliant situation.

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?

There is no doubt that some reform of the current position is needed. However for most who are involved in the Consumer Credit sector the real focus should be on issues surrounding national enforcement/policy within the current control of the OFT. Therefore broad support is given to reform or moving the overall responsibility under CCA. However the levels of protection, consistency and certainly provided by the CCA merits retention.

A detailed look at the CCA requirements and the consolidation of its provisions into one new Act with associated SI's and provisions to react to changes would also be welcomed. It is accepted that there would have to be some form of Ministerial involvement with this, but this would increase the accountability to Parliament and UK legislature.

The differences between consumer credit and other financial products would set them apart in terms of their differing requirements, but the two regimes can easily dovetail in areas where there is a mutual need. Authorisation could easily cover a number of aspects including consumer credit. Thus in part the licensing provision of the CCA could be encompassed by a CPMA authorisation.

In keeping the CCA regime then there would be the potential of cooperation between the CPMA and local TSS which would mean the CPMA could tap into resources which arguably have been under utilised under current arrangements. It has appeared to many officers within TSD's that the OFT lacked the ability and commitment to act in a manner that assisted the day to day enforcement for the consumers benefit. The exacerbation levels were always too high in dealing with a faceless office.

Chapter 3

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 approach may well work in relation to larger businesses and much of the focus of this consultation appears to be in relation to such businesses. However many current consumer credit business are small and the approach would increase the burden on these business in terms of time and money. The current CCA regime, with perhaps the exception of the license fee, minimises costs for smaller business in terms of ensuring compliance. Any wholesale change could add to their costs with little perceived benefit apart from a structured enforcement regime if it follows FSA styles enforcement, but I would always suggest that it would be a backward step in enforcement if Trading Standards Officer were to lose their role in credit enforcement.

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 system always has the potential to penalise those businesses perceived as 'high risk' but which may actually be broadly compliant, in that they inevitably need to spend resources in providing regulators with evidence of compliance. This wastes both the business and regulators resources which would be much better utilised in dealing with non compliant businesses. It would also seem in conflict with the policy direction of recent years, focusing on 'intelligence-led' enforcement, the corner-stone of the Hampton report. An intelligence led approach as adopted by TSS to deal with matters under CCA, provides a much more cost effective approach to enforcement, but operating both in tandem could lead to a stronger enforcement regime and be fairer.

A flexible fee arrangement which would depend on business size would be a welcome move, although it will potentially add burden to the large business rather than assist smaller ones. Considerations on fees can possible mirror FSMA style, with size and turnover being considered.

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

A key factor in fee arrangements is to ensure the regulator is not solely dependant on fees; there is clearly a need to ensure that any decision making process involving licensing decisions are not influenced by the need to maintain income via this means.

Fees should be linked to business size, turnover etc and not their legal status as they currently are. There are large business where there is a sole proprietor and small business which are limited liability Company's. Current such a small business pays more than the larger business due to legal status.

In the event of an overarching body with responsibility for CCA and other financial services there may be two license regimes which could be used. Firstly an overall license which covers all activities. Secondly an element based license where a fee is paid for each element of activity the business wishes to cover. This latter has the advantage of not overburdening business with a license fee which covers areas they will not need. This could also be risk based on the required categories. Thus a small charity offering debt advice may only require one or two elements as apposed to the full fee.

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.

Detailed comment cannot be made on most of the points here. However it does not differ that much from parts of the CCA regime where financial institutions appoint brokers to act on their behalf in entering CC agreements. The financial business has the penalty that if the rules are not followed then they may lose their money. The advantage with the CCA system is the broker too is covered by the rules and knows problems will lead to the main business clawing money back from them. One of the problems with this regime is checking compliance. TSS are not going to carry out un-announced visits or audits and will only investigate after serious allegations. When, in my past life I was involved in compliance of brokerages, lenders etc, we would carry out visits to check compliance across the board; this was a code of practice, CCA, FSMA, DPA, etc etc. We would always find faults and would supervise remedial action immediately. Serious breaches were dealt with by disciplinary action, in house. Whatever regime is adopted it must be hands on and active. That is why a national TSS based system would get my vote based on tight FSA regime

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.

Most TSS have little experience in relation to group licenses and they cover a number of activities where the licensable activity does not involve high commercial and financial stakes.

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.

Self regulatory codes are often problematic. Any trade association depends to a large extent on member’s fees to exist. Thus there may well be a potential for a conflict of interest in taking action against an individual business. Even where sanctions apply, a business can simply leave and operate outside of the code/sanctions. Please see Q 19 answer. I worked for the FISA and they had a tight Code of Practice which was not only funded by the brokers, but in the main by the lenders. We were deemed their extended compliance unit and in the main brokers would be compliant, failure to do so meant that the lenders withdrew any agency agreements; the brokers had no lenders to accept business, so would go out of business or be forced to comply. It worked very well.

An additional benefit would be if non compliance with a code activated fitness questions, then the regulator could call into question any fitness to hold/apply a license.

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 not accepted there is any such case. This would lead to a watering down of regulation and likely to be exploited by the trade.

Chapter 4

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?

It is not considered that the proposed regime would necessarily be any more proportionate or effective than the current regime, except in relation to the creation of a competent, flexible and responsive supervising body under CCA. The incorporation of the current (and if needed amended) CCA regime under a new more dynamic and active body using existing partners and resources would have great merit.

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

26. The Government welcomes views on key factors that would need to be considered in transitioning from the current to a new fee structure.
27. Are there other factors the Government should take account of in considering transitional arrangements?

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.

Re questions 24-28. As broadly there is little support for wholesale change, there are no detailed views on the transfer of the whole Consumer Credit Regime. However if there was a move as mentioned and supported in this response to transfer the current CCA regime in the manner indicated in this response then there are a number of considerations.

- The remedies and protections provided by CCA should remain across all aspects of business. These provide consumers with protections which might be lost if some businesses were removed from its provisions.
- The removal of businesses considered to be ‘not financial services businesses’ from any regime is a concern which could if implemented lead to consumer detriment.
- The removal of the current CCA would mean it could not be used in Enterprise Act actions. TSS would be forced to use other legislation, such as CPRs to resolve matters. Given the proposals associated with the current spending review, this may result in additional pressures on local TSS to which they may not be able to respond.

- Re: just one license for any business involved in financial or consumer credit matters with categories to cover the activities required the business - there would be support for reducing some categories such as combining the activities of credit suppliers and brokers.
- Fees must not be the sole income of any section which is responsible for licensing.
- Any transfer should be quick and seamless. It should be the case that consumers and business do not notice any major change. This is one reason why there is support for the retention of CCA albeit under a different overarching control body.

Summary

There is support for the overhaul of the supervisory body under CCA. What results must be a much improved body which can react to market tends and ensure both business and consumers are fairly treated under a CCA regime.

Support is also given to a consolidation of the current CCA in to one act with the supporting SI's. The legislation can be reviewed to ensure any unnecessary parts are removed.

A CC License fee can be included if needed by the business, via a CMPA authorisation fee.

A CCA branch could sit comfortably under an overarching CPMA organisation.

Submitted on behalf of Suffolk County Trading Standards

SCC TSD

Our Reference: DB/SFM
Your ref: *Consultation on reforming the consumer credit regime*

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RECORDED DELIVERY

17 March 2011

Dear Sirs,

Re: BIS and HM Treasury's consultation paper titled "A new approach to financial regulation: consultation on reforming the consumer credit regime"

Further to the above consultation, please find enclosed the Swift Group's response.

Should you wish to discuss this response, please do not hesitate to contact us.

Yours faithfully

D. Bolland

David Bolland
Director of Legal, Compliance and Risk
The Swift Group

Enc.

swiftgroup

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

Response by the Swift Group

to BIS and HM Treasury's consultation paper

Introduction

The Swift Group has been actively involved in the UK lending industry for over thirty years. The Group includes Swift 1st Limited, which provides mortgages regulated by the Financial Services Authority ("the FSA") and Swift Advances plc, which provides Consumer Credit Act regulated consumer credit secured against land. Swift 1st Limited is currently authorised and regulated by the FSA and Swift Advances plc currently holds a consumer credit licence with the Office of Fair Trading ("OFT").

We are pleased to respond to the Department of Business Innovation and Skills and Her Majesty's Treasury's consultation on financial regulation. The general principle of transfer of responsibility for consumer credit to the FCA is sensible, provided it is undertaken in a realistic time period and there are robust safeguards in place.

We will respond below to each of the detailed questions outlined in the consultation, with the exception of those thatare not relevant to the Swift Group or in which we have limited experience.

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

Broadly, but whilst there has been an increase in the numbers and penetration of pawnbrokers, unsecured pay day loans and other unsecured credit providers, this has been in contrast (and arguably inversely correlated) to the provision of secured credit. The provision of secured credit, which is normally cheaper for consumers, has been massively reduced as a result of the recent financial crisis and has not yet recovered to the levels seen in 2007. It is unlikely that provision of secured credit will, in the medium term, become more freely available, due to a large extent to the continuing increase in regulation of the secured lending sector, of which the most obvious example is the FSA's Mortgage Market Review. This is accompanied by an increased cost of funding for lenders. The combined effect is that it is uneconomic to lend to consumers at affordable rates, resulting in market exit of secured lenders and reducing consumer choice.

In other word, the market has prevented consumers from accessing cheap secured finance and they have been forced into the hands of new expensive unsecured providers.

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?

And

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.**

The presence of two regulatory regimes may on occasions prove to be illusory, with businesses choosing to apply the regime with the highest standard across the same business to reduce the compliance burden.

There is also the argument that separate regulators allow each to be specialist in their own area. This approach conforms with the proposals of HM Treasury outlined in the consultation titled "A new approach to financial regulation: building a stronger system", which described the FSA as a "single monolithic regulator" and proposed the separation of powers between the PRA, FPC and FCA. This recognises the concern that a super regulator model will result in the compounding of errors in regulation across different areas.

As to Consumer Credit Act 1974, it is a statute containing over 193 sections and 5 schedules, supported by over 50 sets of statutory instruments. It is incredibly complicated and often unclear even to experienced consumer credit solicitors, which hugely disadvantages consumers and forces consumer credit organisations to spend large sums on specialist advice. The confusion inherent in the Act has resulted in substantial litigation in the courts as to its meaning, recent high profile examples include *Southern Pacific Mortgage Ltd v Heath* [2009] 45 EG 104, [2009] EWCA Civ 1135, [2010] 1 All ER 748, [2010] 6 EG 116 and *Southern Pacific Personal Loans Ltd v Walker & Anor* [2009] EWCA Civ 1218, [2010] Bus LR 418, [2010] 1 All ER (Comm) 854, both of which resulted in large amounts of litigation being filed in county courts around the country and substantial costs for both consumers and lenders. The Consumer Credit Act 1974's removal from the statute books would not be mourned, provided it is replaced by legislation/rules fit for purpose.

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

Yes they are but our concern is that the timescale for the achieving of these objectives is woefully inappropriate. The Governments desire to create the FCA and then to affect the transfer of the regulation of consumer credit to them by 2014, does not allow sufficient time for all the work that will have to be undertaken, both by the regulator and by regulated entities. By way of comparison, on the Consumer Credit Act 2006, which did not have nearly the scope of what is now being proposed, it was not until late 2008 that most of the significant provisions were implemented, to allow the regulated entities sufficient time to put in place the systems and controls required. More recently, the FSA's Mortgage Market Review, again more limited in scope than what is proposed here, was commenced in 2009 and as at the date of this response is still some distance away from becoming reality. Hector Sants, chief executive of the FSA announced only last week that it was still at the analysis stage and that there would be no rule changes as a result of the MMR until 2012 at the earliest.

In our opinion, a more realistic time scale for the transition of regulation of consumer credit to the FCA would be 2016. This would allow until 2014 for the FCA to bed in and the transfer of the consumer credit regulation could then proceed without distraction early in the next parliament.

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 would repeat our response to questions 2 and 3 of this consultation. We believe that a unified regulatory regime would have a limited impact in promotion of greater clarity, coherence and improved market oversight for both consumers and consumer credit firms.

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.

We believe that council trading standards departments, if appropriately resourced in terms of staff and funding, can play a significant role in the consumer credit regime, acting as a local collector of information, a resource for consumers, a point of feedback for regulated firms in the locality and also in the policing of unauthorised activities. There is presumably no reason why they could not be retained under Option 1.

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.

One key protection of the consumer credit regime is its strenuous requirements on disclosure and transparency of information both prior to the execution and during the administration of the product. This should be retained in the event of transfer but we would suggest if you have a system where the consumer is provided with all relevant information in regards to a product in a clear and understandable manner, the whole issue of paternalism needs to be re-considered. We believe that the balance between the responsibilities of the consumer and of the regulated firm generally needs to be subject to debate.

Some of the key recent statutes in regards to consumer credit protection are the Consumer Credit (EU Directive) Regulations 2010 No. 1010, The Consumer Credit (Total Charge for Credit) Regulations 2010 No. 1011, The Consumer Credit (Advertisements) Regulations 2010 No. 1012, The Consumer Credit (Disclosure of Information) Regulations 2010 No. 1013 and the Consumer Credit (Agreements) Regulations 2010 No. 1014, collectively "the Consumer Credit Directives". However, we would note that while they impact upon consumer credit generally, they do not apply to agreements secured on land such as those provided by the Swift Group.

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 are concerned that the benefits outlined in the consultation, namely greater flexibility and responsiveness, could, on occasion, become detrimental. A rules-based regime can result in the regulator being faster to get it wrong. Where policies are made quickly, there will often be insufficient consideration of the impact of the proposed changes. Robust safeguards are therefore required to ensure that this does not occur, that there is a suitable consultation period, that the responses are given due thought and not simply ignored and that sufficient time is then given for the implementation of any policy arising. Moreover, FSA shift to broad higher-level principles and outcomes within a rule-based framework creates uncertainty and the real risk of retrospectivism.

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)?

We broadly agree that, subject to robust safeguards, that the transfer of consumer credit regulation to a rules based regime would support the objectives outlined in the consultation.

One element of concern though, especially in regards to improved clarity for consumer credit firms, is the use of a rules based regime to apply policy retroactively, as has occurred recently with FSA Policy 10/12 titled "The assessment and redress of Payment Protection Insurance complaints". It is impossible for any organisation to operate in a regulated market, where they cannot rely on compliance with the regulations as they stand at that time as being satisfactory. Consumer Credit firms cannot be expected to predict the nature of a change of regulation in the future. Legislation that is ex post facto is generally frowned upon (and not allowed in respect of criminal matters) and a similar supposition should be inherent in any rules based regime.

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?

Our experience of the consumer credit market is that certain sections of it would benefit from greater regulation. The regulation of consumer credit in a similar manner to other retail financial services would serve to better protect the consumer.

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?

We repeat our response to question 4 in regards to the timing of any transition period.

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.

In so far as the Swift Group is concerned and as there is a substantial similarity between its FSA regulated products and its CCA regulated products, all of the FSMA provision would be equally applicable to regulation of its current CCA regulated book. We would however repeat our concern outlined in response to question 12 that some aspects of the FSMA regime are not suitable to the products they currently regulate and would be disappointed if those aspects were carried over to the FCA, if and when rules based regulation of consumer credit is introduced.

One other area of concern would be the potential impact of an FSMA style regime upon product distributors, for example brokers and the concern that the intensity of regulation may lead to market exit in that sector. This is to be avoided as it would lead to a reduction in consumer choice.

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 are pleased to note that the government appreciates that regulation must be proportionate to risk. A risk based regulatory approach and fees based upon the amount of regulation that is required is sensible.

The 6th survey of regulated firms by the Financial Services Practitioner Panel showed that while most organisations across all sectors are convinced by the benefits of strong regulation, there was concern amongst organisations outside of the banking sector and lower risk organisations that the FSA was increasing the intensity of regulation and that this was being unnecessarily applied uniformly across the industry, irrespective of the relative risk a firm posed. They felt that over the last two years a great burden had been put in place and the costs of compliance with regulation were excessive. If a similar approach is taken by the FCA, it will result in market exit from the industry and lead to reduced choice for consumers.

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

We would consider the key factors are:

- size of the regulated organisation, in terms of amount of credit advanced;
- number of approved persons;
- type of regulated activity and the potential risk to consumers/UK economy of that activity;
- number of regulated activities undertaken by the organisation
- market impact.

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.

Currently, Swift Advances plc is an appointed representative for Swift 1st Limited for the purposes of insurance mediation only. We would be reluctant to appoint any representative that was not under the direct control of the Swift Group as the risk of a 3rd party being non-compliant would be too great. Mitigating that risk would be difficult, costly and simply not worthwhile. However, we would not discount the appointed representatives regime proving to be a useful and proportionate mechanism for mitigating the costs and regulatory burden in respect of distributors.

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 Swift Group is a member of the Finance and Leasing Association and the Council of Mortgage Lenders and subscribe to the lending codes of those organisations. However, the regulations set out by the FSA and the OFT in respect of secured lending and our own policies and procedure are super equivalent to those codes. Self regulatory codes may have greater benefit in other areas, such as consumer credit debt collection, where the OFT and Credit Services Association/Debt Buyers and Sellers Group have together produced guidance on collection letters and in respect of certain other niche areas of lending, such as payday lending.

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 we are subject to the FSMA regime in respect of regulated mortgage contracts provided by Swift 1st Limited, we have been exposed to the approved persons regime and all of Swift 1st's directors are approved persons. The current model is of course due to alter in June 2011 with the implementation of Policy Statement 10/15 titled Effective Corporate Governance: Significant influence and controlled functions and the Walker review, which followed the consultation paper CP10/03.

The concern with both the current and future structure of the approved persons regime is proportionality. It should be the case that small limited risk organisations can avoid certain requirements, such as appointments of approved persons in the CF 14 and 15 roles, where it would not be proportional and would apply an excessive administrative burden.

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

Provided the period for transition to the new regime is adequate to reflect the scale of such an undertaking, for an organisation such as the Swift Group, which holds an FSA authorisation at the moment, ensuring the ongoing administration of its back book of consumer credit agreements meets any new rules based approach should be straightforward. The difficulties would of course arise for those organisations that are not already subject to a rules based regime.

While there would be no objection to the future administration of consumer credit loans being subject to an FSMA style regime, as stated at point 12, we would be against the retrospective application of rules to the inception and/or administration of consumer credit agreements prior to the date on which any FSMA-style regime is introduced. There are also greater protections (arguably too great) to the consumer of this approach. Examples of this would include agreements which fail to comply with a requirement of the Consumer Credit (Agreements) Regulations 1983, such as missing an amount of credit. Currently, if the consumer credit agreement was non-compliant it would either be unenforceable, or depending on when it was completed, enforceable only with an order of the Court. The former is obviously a fairly draconian punishment on the creditor for what can often be a minor error but one presumes it was the intention of parliament at that time that it be so.

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.**

We are of the opinion that it would not be appropriate for FCA authorisation to be granted to holders of existing consumer credit licences as a matter of course as part of any transitional arrangements. Our experience is that the approval process for FSA authorisation has a higher standard of rigour than that for consumer credit licences and as such provides greater protection for consumers. On the basis that it is unlikely the FCA will to adopt a less rigorous process to that currently in place for FSA and that it would be detrimental to consumers if they did, we believe the appropriate course of action would be for all holders of consumer credit licences to be required to apply anew for FCA authorisation.

In areas where they have not been subject to a more intensive rules based regime prior, it is essential that such organisations be given sufficient time to transition from the old system to the new to prevent/reduce market exit. A transition period which allows these organisations to undertake training, increase competency and put in place system and controls in a cost effective and timely fashion will help in that regard.

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 key factor will be for account to be taken as to the timing of the charging of new fees, either that the new fees are only payable as and when they would have been due to be paid under the old system or alternatively old fees paid are rebated proportionately if the new fees are due to be paid prior to the date old fees would have been. The former would be preferable in terms of administration, especially for the regulator, and would be achievable within a transition period of sensible length.

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

We repeat our response to question 4 of the consultation.

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 Swift Group has direct experience of the introduction of FSA regulation of mortgage contracts secured by 1st charges in October 2004. Our experience was that the transitional arrangements put in place by the FSA on that occasion were by and large very good. The existence of an implementation date where all offers made prior were not FSA regulated (even though they may not have completed until after the implementation date) and all those, including amended offers, made thereafter were, made it very clear for lenders which regulations were applicable.

However, we would re-iterate our response to question 12 and make clear that any transitional arrangement would be pointless if the rules based regulation were to apply retrospectively

The other point we would make in regards to "M-day" was the attempt by the FSA to make lenders directly responsible for brokers and their actions. This led to strenuous debate between the FSA and lenders and ultimately resulted in delay to the implementation of FSA regulated mortgage contracts. As stated, while the appointed representatives regime may prove to be a useful and proportionate mechanism for mitigating the costs and regulatory burden in respect of distributors, it should not be forced upon lenders.

Finally, the system changes required for the implementation of FSA regulated mortgage contracts were significant and required substantial resources in terms of time, personnel, IT and specialist advice. For example, the drafting, checking, authorising and setting up on loan management systems of the KFIs alone took almost a year. It must be appreciated and borne in mind when setting the transition periods that not all organisations will have the large IT and Compliance departments necessary to effect changes quickly. Further there is a limited number of counsel who undertake regulatory compliance work and if the transition period is short, it will result in every organisation trying to obtain advice at the same time which in turn will result in difficulty for some in obtaining advice and assistance in drafting.

Dear Sir/Madam

Thames Valley Housing Association response to the Treasury consultation on reforming the consumer credit regime

Thames Valley Housing is a not for profit organisation we own and manage over 14,000 homes provided for rent and low cost home ownership.

We welcome the opportunity to outline our key thoughts on the Treasury's consultation paper on reforming the consumer credit regime, in particular the proposal to transfer responsibility for consumer credit from the Office of Fair Trading (OFT) to the new Consumer Protection and Markets Authority (CPMA).

We perform a wide range of activities which are regulated under the Consumer Credit Act (CCA). These ancillary credit related activities are typically linked to our business as responsible social landlord, and includes debt advice, debt negotiation, credit referencing and collecting third party debts. An example of this in practice may be where we offer vulnerable tenants budget advice or speaking to creditors on behalf of distressed tenants.

It is therefore questionable whether such activities are really what the CCA is intended to regulate. These are activities that are performed to benefit tenants, and often in pursuance of broader charitable and philanthropic objectives, but nonetheless fall within the CCA regulation. Whilst low-risk and outside of our core business, as a consequence of such valuable activities housing associations are required to comply with the CCA and complete the time-consuming and burdensome process of applying for licences.

Another area of our activity currently regulated by the CCA is our provision of equity loans as a second charge on a property, when delivering government-funded low cost home ownership. Thames Valley Housing has, for the last 30 years, delivered a range of sustainable home ownership products to help households excluded from the housing market.

We have administered and delivered a form of equity loan called Open Market HomeBuy. Although the scheme has been subject to number changes through the years the basic premise is for an equity loan product used alongside a deposit and a conventional mortgage, funding between 15% and 50% of the properties value. Interest is payable on the unsold equity and fixed at 1.75% in year one (rising by RPI plus 1% thereon). In July 2009 this product was discontinued. However, we will continue to administer and manage existing loans where the full value has yet to be redeemed and the purchaser will be making interest payments on the loan, so would require FSA registration under the proposals.

The FSMA represents very rigorous regulation. This appears wholly sensible for typical financial services provision, indeed we support the move to having one regulator for financial service providers. However, we believe it is wrong to conflate the services we offer, in the form of equity loans, with this. We believe that that the existing CCA provisions offer an appropriate level of regulation and consumer protection. In addition to this, the sector is already independently regulated by the Tenant Services Authority (a function that will transfer to the Homes and Communities Agency in April 2012). As previously mentioned, the cost of compliance with an additional layer of regulation is disproportionate to the level of risk and will make the provision of equity loans very unattractive to housing associations due to the additional administrative and time costs incurred.

On a practical level, it is difficult to understand how suitable the FSMA regime is for the regulation of equity loans. As a requirement of both CCA and FSMA regulation, lenders must give borrowers particular information relating to the terms of their loan. For example, the Annual Percentage Rate (APR), the total charge to credit and the interest rate must all be provided. None of these can be provided for equity loans given the nature of the product – the loan is for a percentage of the open market value of the property at a particular point in time. Therefore, the APR equivalent, the total amount repayable and the interest rate equivalent are not known at the point the equity loan is granted – they are only known at the point of redemption. The CCA is flexible enough so as to allow housing associations to apply for a Direction from the OFT which exempts them from having to provide such information for equity loans. There is no detrimental effect on borrowers, as we provide detailed examples based on assumptions as to house price increases. The FSMA regime does not offer similar flexibility.

Once again I would like to make the point that our activity is low risk and wider activity is already subject to regulation from the TSA. Moreover, the provision of our equity loans is preceded by a robust affordability check which ensures the consumer is adequately protected. The retention of the CCA for second charges granted by housing associations seems to be the most logical and transparent means to ensure that our ability to deliver affordable housing opportunities for those in need is not harmed by over regulation. CCA is an existing approach which is well-known to housing associations and affords the consumer good protection. This would of course ensure consistency with EU legislation which requires there to be some form of consumer credit regime, under the Consumer Credit Directive.

Yours sincerely

Kush Rawal
Head of Sales & Marketing
Thames Valley Housing Association

[personal contact details removed]

What House - Gold medal winner, Best Large Housin

What House - Silver medal winner, Best Shared Own

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CONSUMER PROTECTION & MARKETS AUTHORITY
[Financial Conduct Authority]

From: **TOWER CAPITAL 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 *Tower Capital Limited* on "a new approach to financial regulation: consultation on reforming the consumer credit regime".

Tower Capital 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 . We employ 10 people and provide small loans up to £5,000 over short to medium terms .

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.

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:

1. further unwarranted changes to consumer credit regulation
2. the extension of the new regime to small business lending
3. a requirement for all existing lenders to re-apply for authorisation for both existing and past business
4. significantly higher regulatory fees
5. the loss of the certainty of the legal position on loan agreements
6. further disruption to business during the handover and changes
7. lack of experience on consumer credit in the new Authority
8. 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

Philip Valler
Director

This is the response from the Trading Standards East Midlands Fair Trading and Credit Group so represents the collective view of trading standards officers in Derbyshire, Derby City, Nottinghamshire, Nottingham City, Leicestershire, Leicester city, Northamptonshire and Lincolnshire.

This consultation was discussed at our meeting on 9 March 2011. While we do not have the time or resources to respond in detail to the full list of consultation questions we would like to put forward our general opinion on the consultation, which was unanimous.

We are in favour of transferring consumer credit regulation to a FSMA-style regime within the CPMA.

Regards

Paul Niblock
Principal Trading Standards Officer

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www.derbyshire.gov.uk/tradingstandards

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

HM Treasury consultation 2011

Response of
The Trading Standards Institute

March 2011

March 2011

The Trading Standards Institute welcomes this opportunity to respond to the Treasury document “A new approach to financial regulation: Consultation on reforming the consumer credit regime”.

The Trading Standards Institute is the UK national professional body for trading standards professionals working in both the private and public sectors.

Founded in 1881, TSI has a long and proud history of ensuring that the views of our over 3,000 Members are represented at the highest level of government, both nationally and internationally.

TSI provides accredited courses on regulations and enforcement which deliver consistent curriculum, content, knowledge outcomes and evaluation procedures, with the flexibility to meet local authority, business and operational needs.

Examples of the role of Trading Standards Services in the current Consumer Credit regime (intelligence gathering, enforcement, Illegal Money Lending Teams, provision of information to consumers and businesses) are given throughout this response.

In compiling the response, TSI has included the views of our Lead Officer on Consumer Credit, Jenny Mainwaring. If you require clarification on any of the points raised in the response, please do not hesitate to contact Jenny at email locredit@tsi.org.uk or by telephone on 0845 608 9498.

TSI does not regard this response to be confidential and is happy for it to be published.

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A new approach to financial regulation: Consultation on reforming the consumer credit regime – HM Treasury – December 2010

Trading Standards Institute response

Chapter 1

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

The Trading Standards Institute (TSI) believes that this is a fair assessment of the consumer credit market. In addition, TSI is pleased that the role of Trading Standards Officers as both intelligence gatherers and enforcers of consumer credit, and other related legislation, is recognised.

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?

Although the consumer credit function is currently split, TSI believes that the Trading Standards Service has worked well with its partner agencies over the years.

Examples of this include:-

- Providing evidence for both the FSA and OFT licensing regimes, either informally or by witness statement.

- Joint enforcement exercises, such as the annual joint advertising control exercise conducted by the OFT and local Trading Standards Services.

- The Illegal Money Lending teams which work in England, Scotland and Wales, and across county boundaries.

- Compliance visits which are carried out by a Trading Standards Service on behalf of the OFT. This allows a Trading Standards Service's local knowledge to be utilised to address possible problems with those who require a credit licence in a high risk category, such as debt collection. Visits such as these, and the advice given by Officers during these visits, hopefully prevent possible problems and consumer complaints in the future.

- When carrying out consumer credit visits, either on their own behalf or on behalf of the OFT, a Trading Standards Professional will gain a huge insight into the business. Other areas of law are also enforced by Trading Standards Services (such as the Unfair Commercial Practices Directive). When visiting a business, Officers are able to check whether or not other legislative areas are also being complied with. It is common that if a business is not complying with one piece of legislation, either by negligence, accident or design, then they will not be complying with others. A visit from a Trading Standards Officer allows for a comprehensive assessment to be made, more so than submitting a raft of documentation.

- With the demise of Consumer Direct, the Trading Standards Service will, once again, be more directly involved in giving a first line advice service to consumers. Since the inception of the legislation, the Trading Standards Service has taken the lead in advising businesses as to their legal requirements under the Consumer Credit Act (CCA). The Trading Standards role in advising consumers as to their rights and obligations under credit agreements has long been recognised. An example of this is shown in relation to cancellable agreements. The paperwork a consumer receives states "if you require further advice please contact your local Trading Standards Department". It is not unusual for departments to receive calls from consumers about this.

As the information above shows, although the function is split, the Trading Standards Service has played its part in ensuring that the legislation is effectively implemented. Whichever of the two proposed outcomes is decided upon, the Trading Standards Service is well placed to continue to have a large input into its effective implementation.

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.**

One of the key ways the Trading Standards Service ensures consistency of advice is by the Home Authority Principle.

Businesses will generally build up a relationship with, and receive advice and information from, one particular local authority. This is usually the local authority where the business is based. The Home Authority is usually the local authority where the relevant decision-making base of the business is located. If the business is a sole trader and has only one site or office, the Home Authority will be the local authority where this site or office is located. This also applies to businesses trading over the internet. For a business with multiple branches, stores, etc. throughout the UK, the Home Authority will generally be the local authority where the head office (or decision-making centre) is located.

The Home Authority Principle is therefore a scheme developed by local authorities to help businesses by providing contact points for advice and guidance in order to maintain high standards of public protection, encourage fair trade, and develop a consistent approach to enforcement. The Home Authority Principle has a number of benefits.

A Home Authority relationship can:

- improve business-wide operation procedures or methods as a result of advice from the Home Authority on compliance and good practice.

- minimise unnecessary burdens arising from legislation, for example by agreeing, at an early stage, details of how to comply with new requirements or introduce new product lines.

- promote a better understanding and awareness with the Home Authority of commercial issues, including consumer credit, in relation to the business.

- provide a route for coordinating and resolving differences between local authorities and the business.

- assist businesses based in that Home Authority area to trade successfully in other parts of the UK .

The local authority acting as Home Authority may carry out a number of roles for business. For instance, they may:

- provide contact officer(s) and identify the scope of its Home Authority service to the business.

- provide advice and guidance.

- visit the business and monitor trends, company policies, etc.
- ensure the business complies with all relevant legislation and/or
- act as a contact point for other local authorities that may have queries and complaints about the business.

All local authorities have a statutory responsibility to enforce the law in their areas and undertake investigations, inspections, etc. of a business, even if they are not the Home Authority for that business. The Home Authority Principle encourages local authorities to effectively liaise and communicate with the Home Authority of a business before undertaking enforcement action.

The importance of the Home Authority Principle is widely recognised by local authorities and central government. It provides a way for local authorities to work effectively in partnership with businesses within their local area to deliver robust and consistent enforcement and advice services across the UK.

In addition to the Home Authority Principle, the Trading Standards Service tries to ensure consistency in other ways. For example, both the Banking and Finance and Consumer Credit Sectors have Lead Officers within the Trading Standards Institute who are responsible for having a permanent overview of their subject. Also, through either on-line forums or regular meetings, Trading Standards Officers collaborate on the more complex areas of legislation to ensure that consistent advice is given to both consumers and the trade alike.

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

Throughout the consultation document there is no mention of how the enforcement of Consumer Credit legislation will be managed at a local level. The Trading Standards Service is ideally placed to deliver this. To comply with Consumer Credit legislation, lenders must issue paperwork, either in the form of the credit agreement itself, or default notices, etc. It is very inconvenient for a trader for this paperwork and other documentation to be checked centrally. Also, in order to be considered fit and proper, the trader must have adequate systems in place. The Trading Standards Institute suggests that much more thorough checks can be carried out following a visit to the premises. In this manner, systems can be checked in practice, rather than the theoretical system that may be sent through for auditing.

In addition, if a business is visited, then its whole make-up and operating practices can be inspected. Any problems can be discovered and dealt with “on the spot” rather than a letter or the email "ping pong" that often develops when people try to get issues solved centrally.

The most important consideration is that, because of its inspection and enforcement role, the Trading Standards Service will probably already be visiting the company's premises in relation to other matters, especially if the business is newly starting up. Therefore any extra burden, either on the business or the Trading Standards Service, imposed by a visit in connection with consumer credit matters is limited.

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.

Because of its long history, the Trading Standards Service is a well-known and well-respected avenue for advice within the credit sector. Consumers seek our views when problems occur. Of the legislation listed in section 2.7, most is already enforced by Trading Standards Services on a daily basis. If the Trading Standards Service continues to enforce Consumer Credit legislation alongside its numerous other Acts, then this will allow traders and consumers to see a consistent enforcement face.

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.

The Trading Standards Service, as is further explained elsewhere in this response, has long held a substantive role in both the enforcement and regulation of the Consumer Credit Act. This long-standing relationship has lead to a wealth of expertise being built up within the organisation. Although, over the years, the qualifications taken by Officers have grown and developed to keep in line with change, Consumer Credit has always been at the core. In these financially difficult times, consumers and traders alike know that they can contact the Trading Standards Service for free, impartial advice about the subject. This is a local service, easily accessible to all.

Over the years, the Trading Standards Service has taken a strong lead in the enforcement of the Consumer Credit Act. TSI was disappointed to read in annex B that "CCA provides for a number of criminal offences but criminal prosecutions are relatively rare". Statistics received from the OFT show that from 1st April 2008 until

31st March 2010 there were 46 prosecutions under the Consumer Credit Act by Trading Standards Services. These have resulted in fines, community sentences, and sometimes imprisonment.

A more recent addition to the face of Consumer Credit enforcement is the work of the Illegal Money Lending Teams. Since their inception there has been a marked increase in the number of prosecutions undertaken against illegal lenders. Once the warrant has been executed, other criminal offences, such as kidnap or demanding money with menaces, have often been discovered. However, it is the unlicensed lending that is at the heart of the crime.

It is vital that illegal lending is not seen as a technical matter. Although some illegal lenders don't have a licence because of negligence or neglect, most would never be considered as "fit and proper" in the first place. Therefore, even if they did apply, no licence would hopefully be forthcoming. If these lenders do not comply with a legal obligation, they are even less likely to comply with a code of practice. Any regulatory system must have teeth. A stiffly worded letter or similar would have no effect on these career criminals. To take away the licensing system altogether or to replace it with something like a negative licensing system such as they have for estate agents, would, we submit, be a criminal's charter and would leave those most vulnerable severely under-protected.

It is true to say that, before the Illegal Money Lending Teams were set up, prosecutions of illegal lenders by Trading Standards Services were extremely rare. Illegal money lending is a particular crime requiring a specialist type of investigation. A 24/7 hotline open for worried victims and a specialist support section where victims can be referred to other legitimate sources of finance are just two of the areas that have been developed. Since the inception of the teams, nearly a thousand instances of illegal lending have been investigated with formal action resulting in many instances. Some argue that such crime should be investigated by the police service. With their time and budgets already over-stretched, however, where would this crime fall?

The Trading Standards Service has always worked hard in its partnership role as a regulator of consumer credit. Whichever option is chosen, the Trading Standards Service is still ready, willing and able to play its part.

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.

The current and future role that the Trading Standards Service can play in relation to Consumer Credit has already been explained. TSI believes that both consumers and the legitimate trade deserve a strong service, not one diluted by regulatory change.

8. The Government would welcome further evidence relating to:

- **the use of consumer credit by small and medium sized enterprises (SME's).**

- **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 SME's.**

TSI would suggest that small and medium sized enterprises that may not have the finance to belong to a trade body or have their own solicitor to guide them through the legal maze may experience as many, if not more, problems with consumer credit as their larger counterparts. The Trading Standards service is currently there to fill this void.

The Consumer Credit Act, and the developments brought about by both the 2006 Act and the more recent Directive, is widely encompassing. Whilst the current fee regime, which does not differentiate between large multinationals and small limited companies, may need overhauling, why should a consumer who obtains a credit product from a small enterprise be any less protected than someone who obtains credit from a large company?

Whatever the size of business, all that most consumers are concerned with is that they are dealt with fairly and equitably. If they have a problem, they want it sorted out as quickly and efficiently as possible. If they have a complaint, they want it heard sympathetically. Whichever methodology brings about this level of service to consumers and allows for a level playing field for consumers where the illegitimate trader is not unduly advantaged, then that is the one that TSI naturally advocates.

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 most important thing with any regime, whether rules-based or otherwise, is clarity. Clarity for businesses, clarity for consumers, and clarity for enforcers. TSI is concerned that a rules-based regime may be too “woolly”. When legislative changes have come into place, the OFT has issued documents such as their “frequently asked questions”. These have been of great assistance to both the trade and enforces alike. If a rules-based approach is adopted, we at TSI would look to see that there is sufficient clarity to enable a consistent approach to be adopted.

It is stated that a rules-based approach would allow for quicker changes when new products appear on the market or to allow developing problems to be addressed. This speed of change would be welcomed by TSI. Surely, however, no matter what regime is adopted, we are still bound by the recent EU Directive and the implemented UK legislation. Surely any approach would have to take account of this and its constraints?

With the recent implementation in February 2011 of the EU legislation in UK law, the 2006 Act and other changes, for example those brought about by the Competition Commission investigation into the home credit market, there have been a huge number of changes in recent years. Is now the time for even more?

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

We at TSI support a risk-based approach provided, however, that any risk is accurately calculated.

The document discusses having a conduct focused supervisory approach. What is not clear, however, is what the consequences of poor conduct are? Also, what sort of evidence will be needed to show poor conduct? What is needed is a quick and easy system to stop problematic licensed traders from trading as soon as possible. One of the problems with the current system under the CCA is that it is lengthy. With the technicalities of the appeal system, even when a trader is issued with a minded to refuse notice, the business may continue to offer credit or perform another of the licensable activities for a long period of time, often causing significant detriment to consumers and an unfair advantage over those in the trade who behave in a legitimate manner.

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.

The Trading Standards Service already enforces legislation in relation to the sale of goods. Often, if a business is committing criminal offences in one area then they will be committing offences in others. For example, a garage which is selling un-roadworthy vehicles may also be offering credit terms. Officers usually find any advertisements are incorrect or the APR miscalculated. If this criminality is separated out and enforced by different agencies, then any enforcement action may not be appropriate or sufficient. This has been shown in the past with illegal lenders. If a loan shark is only prosecuted for not having a licence, this is often seen by the courts as a technical offence. If, however, other related offences, such as demanding money with menaces, assault etc., are added, this allows the court to see the full extent of the criminality and react accordingly.

The Trading Standards Service has always welcomed the opportunity to input information to the OFT when they were considering a consumer credit licence application. We would hope that, whatever the new regime, we still have an opportunity for a similar input.

Another important consideration when considering the sale of goods is the protection afforded to consumers by section 75 of the Consumer Credit Act. We at TSI would resist any attempt to limit these protections in any future legislative regime. Knowing that they will be liable, in case of future problems, will hopefully mean that credit providers take extra care when considering whom they allow to offer their credit products.

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)?

Obviously everyone wants a world class regulatory regime that responds to gaps in the marketplace and places a proportionate burden on business. However, TSI considers the most important consideration to be that consumer protection for everyone, including for small businesses, is strengthened.

The Trading Standards Service not only looks to enforce the legislation, but also looks to offer advice and assistance to both the trade and consumers. This hopefully prevents problems before they happen. Examples of this include the information leaflets produced by many Trading Standards Services, the service offered to Home Authority companies, and the advice given to traders. All this has a strong local element and is free to users. Visits can be made to traders at a time and place to suit their needs, and consumers can be visited in their home if necessary.

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?

It is unclear from this discussion document whether the new credit regime will have a base solely in London or if there will be any local or regional element to the new regime. If the service does not have a local element, then there will be limitations, as discussed in previous answers.

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?

If the service would benefit from either local enforcement or local advisers, then we at TSI would suggest that the Trading Standards Service, with its already established history in this area, would be best placed to deliver this.

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?

The Trading Standards Service already has the skills and resources necessary to continue its enforcement of consumer credit legislation. The training that Officers receive is very comprehensive. Consumer Credit forms part of the degree syllabus which is taken by qualified Officers. In addition, there is an on-line training package and the Institute holds regular training courses on the subject which Officers can attend. TSI has recently re-developed the definition of "Trading Standards Professional". This, along with Continuing Professional Development, means that our qualification base is second to none.

Chapter 3

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.

We at TSI would submit that it is not just the size of a business that is important. Other aspects need to be considered such as:-

- Trading history of the business itself and its controlling minds and any previous businesses they may have been involved in.

- Length of trading.

- Number of complaints received by outside agencies and how effectively these were dealt with.

- Type of credit activity undertaken, e.g. debt collection and debt advice may be considered to be more "risky" than other credit activities.

- Do any of the controlling minds of the business have any significant criminal convictions?

- Is the business involved in any associations governed by a code of practice?

- What knowledge do the controlling minds have of consumer credit and its associated regulations?

TSI would also submit that, in our experience, it is not the large-scale money lenders which pose the greatest risk to consumers - it is those businesses which engage in certain behaviours, i.e. cold calling, or chasing the wrong person for a debt because of inadequate checks. This can be a business of any size.

17. Do you agree that the 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?

As was previously stated, we at TSI agree that different fees are more proportionate for different-sized businesses. Also, how effective the risk-based approach will be depends on how the risk is calculated and, more importantly, upon what evidence is used, e.g. are generalisations made, or will a more specific calculation be taken?

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

TSI would suggest that, if a company is looking to rely on agents to effectively operate its business, then it is not just the size of the enterprise, but also the number of agents that should be considered in any calculations. Any formula, in order to be effective, needs to be based on evidence that is readily auditable and easy to consider. From a business point of view, any equation will need to be based on something that is fairly stable (e.g. turnover of a company can vary greatly year on year and can be difficult to predict). In order to facilitate future budgetary planning and any associated costs to business from the credit licensing system, the more stable the calculation the better.

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 representative regime; might have for firms and consumers.**

We at TSI have little evidence about the appointed representatives scheme. However, it does seem to rely heavily on the fact that a company can effectively control the behaviour of its agents. If this scheme is implemented, we would like to see effective steps introduced to ensure that agents are properly and effectively managed.

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.**

The Trading Standards Service has had few problems with consumer credit businesses that hold a group licence. The proposed professional bodies regime sounds very similar.

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.

Self regulation is all well and good in a market that is relatively problem-free. Can the Treasury be sure that this is the case for SMEs? Also, as has previously been stated, as far as Trading Standards Services are concerned, SMEs are just as problematic as larger businesses, if not more so.

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 at TSI would not suggest that any category of credit activity be deregulated. The consequences to consumers of problems occurring in relation to the credit product could possibly be severe. If problems do occur, then they can happen quickly and with consequences that can be irreversible. If someone gets into debt, then it affects not only their financial circumstances, but often their mental health. In extreme circumstances they can even lose their home. A debt which may have stated out small can have huge consequences.

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 has been expressed earlier, we at TSI feel it is vital that Consumer Credit legislation is not de-regulated. In addition, we feel that this may be an ideal time to strengthen some areas where we believe there to be a weakness. One such area is the section offence of 39 unlicensed trading.

Experience shows that there are two sorts of offenders under this section.

Firstly, those who forget to renew the payment on their licence or genuinely do not realise that a licence is needed. This is the first level. These can be seen as almost "technical" offenders.

Secondly is the more serious offender. Those who have a complete disregard for the law. Those who never have any intention of giving out credit agreements or representative APRs. Those who have no concept at all of the meaning of responsible lending and would probably never get a licence because of their lending behaviour, even if they ever applied for one. Ideally the law would be changed to reflect these two tiers of behaviour to allow offenders to be punished accordingly.

Chapter 4

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

The most important part is that consumer protection should be continuous. Consumers should not be left vulnerable because of any period of transition.

In addition, we at TSI feel that it is important that future and transitional provisions be careful scrutinised so that no loopholes are created which may be exploited by the unscrupulous. However, as was stated previously, how much change to agreements is actively being looked at, given the fact that we will still have the EU Directive in force?

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.**

When looking at how matters would be dealt with, one of the most important considerations is how long the transitional period is likely to be. In addition, the proposals seem to be suggesting that all those who hold a current licence should be automatically eligible for a licence under the new system. We at TSI would dispute this.

Recently the OFT, following legislative and other changes, has looked a lot more closely at licence applicants and their "fitness" to either obtain or to hold a credit licence. In the past this has not always been the case. TSI would suggest, therefore, that certain criteria are looked at before a licence under the new system is given, e.g. the level of complaints held by partner agencies about the licence holder. If, due to the size of the task, this is not deemed to be possible, then a risk strategy surrounding transitional licences should be adopted.

The other problem that we can foresee is that if in one regime (either the old or the new) it is deemed easier than the other to obtain a licence, then there may be a log jam of applications. In addition, if there is going to be a straight transition from one licence system to another for licence holders, then we do not want to create a system in the transitional period whereby someone would be granted a licence under the current system, but would not if they applied under the new arrangements because of the differing or more strictly applied criteria.

In the past, due to the reasonable price of a consumer credit licence, many holders took a licence out for categories of activity they were never actually intending using. To transpose all these people onto the new system, where price differentials for licensable activities may be more significant, may not be efficacious.

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 main consideration, TSI feels, should be that traders should be given as much notice as possible of any changes to the current system. Currently, licence holders believe that they are enrolled onto a "licence for life" scheme. They will, therefore, need to be fully informed of the changes both to the system itself and any proposed price increases.

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

We at TSI would suggest that when the proposals are finalised they be publicised as widely as possible. Not all licence holders are part of a trade body or other similar organisation, so additional avenues of communication should be explored. In addition, when deciding upon the transitional arrangements, consideration will need to be given to what, if any, training provision is going to be made for licence holders, consumers, and others involved in the new procedures.

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

TSI has limited evidence to add in this area. However, whatever regime is decided upon, we at TSI would like to lend our support in whatever way is deemed necessary, just as we have done in the past.

Trading Standards Institute – March 2011

Trading Standards North West

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Dear Sirs

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

This response represents the consensus view of Trading Standards North West and has been led by the regional Finance and Credit Group. Officers have had the opportunity to read the consultation document.

Chapter 1

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

    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?

    It is not a fair assessment as the Financial Services Authority (FSA) deal with a different level of products to consumer credit

products. A better split would be to separate credit secured on land from retail credit.

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.

The types of risks faced by consumers are changing credit markets and products, fraud, unclear credit agreements and Bill of Sales.

Examples of current frauds or consumer detriments are:

Paying money up front for a loan or credit card that does not materialise;

Having to pay for outstanding insurance products when HP agreements are terminated half way through;

Complex credit agreements and pre-contract information; and

High pressure selling of credit and associated insurances.

Under the current regime consumers have the protection afforded by Section 75 of the Consumer Credit Act 1974. Consumers contact Consumer Direct for initial advice on Section 75 issues and they are referred to Trading Standards if further advice is required. They can have their credit agreements checked by Trading Standards and can get advice on how to make a claim.

We are concerned that the new body (CPMA) will just collect intelligence and will not primarily be concerned with consumer protection. We would hope that, under the new regime, consumers' present rights are protected and they will also receive additional rights in line with the protection currently given to consumers by the FSA in relation to insurance products.

We feel the last point is a question to be answered by business.

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

We would need to know how the current legislation e.g. the Consumer Credit Act, Consumer Credit Directive, Cancellation of

Contracts, Consumer Protection from Unfair Trading Regulations would fit into the new regime. We need more details on how consumer protection will be preserved and enhanced under the new regime.

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.

The improvement will be dependent on the regime being adequately funded and suitably endorsed by Government. Credit does not operate in isolation from other markets so there needs to be an arena to deal with consumer problems holistically. We will need to know which Single Point of Contact is being offered to consumers e.g. Financial Ombudsman or Consumer Direct.

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.

Currently Consumer Direct, the Citizens Advice Bureaux and Trading Standards can deal quickly with credit complaints. Consumers are directed to the Financial Ombudsman Service as a last resort. There is also the Illegal Money Lending Team who are very successful in tackling unlicensed money lenders and loan sharks and the regional Scambusters teams who deal with level 2 frauds.

Trading Standards and Consumer Direct provide intelligence to the Illegal Money Lending Team and the Office of Fair Trading on credit licensing issues.

Trading Standards provide business advice on a local level and as part of Home Authority or Primary Authority relationships. They carry out compliance visits on behalf of the Office of Fair Trading and have face to face contact with local companies when dealing with complaints.

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.

The government may wish to consider:

The OFT’s CRW website which contains the Public Register and The Central Register of Convictions.

The Illegal Money Lending Team rely on offences under the Consumer Credit Act to deal with unlicensed money lenders.

The checking of consumer credit advertisements locally and nationally.

The Office of Fair Trading's Guidance notes and approved trader schemes.

The Office of Fair Trading's review of consumer credit sectors such as the recent Debt Management Review.

Consumer Protection needs to be transferred with rigid enforcement. Will there be scope for partnership working between the CPMA and Trading Standards? Who will take the lead on Enterprise Act action?

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.

We currently get complaints from SMEs about credit contracts for products such as photocopiers and taxis. Some are already covered by current legislation but others could benefit if this protection was extended. It should not matter if the company is Limited or not as many very small businesses are now Limited Companies.

We feel the last point is a question to be answered by business.

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.

Some flexibility is good but some certainty will be needed in order to take enforcement action. Trading Standards will need an input into the rules-based regime in order to influence a change to the rules as problems arise.

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

As a regulatory body, we have concerns that a FSMA-style supervisory approach may not effectively protect consumers in all circumstances. There may be more concentration on national

issues to the detriment of local issues. There needs to be good lines of communication into the supervisory body to enable local input into the regime.

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 then design of the new regime.

Sections 57 and 75 of the Consumer Credit Act 1974 give consumer additional rights when buying goods with credit. Also, Regulations made under the Act control the advertising of credit and the form and content of agreements. If the agreement regulations are not followed, the agreement may be rendered unenforceable. This is a good sanction for non-compliance and we believe it should not be lost.

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)?

Yes

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 disadvantage is the issue of enforceability. We are not sure what the rules will be. At present the Consumer Credit Act is the ultimate sanction against non-compliant businesses and can leave a business with a criminal conviction.

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?

As previously stated there is the issue of enforceability and sanctions. Also we do not know what the single point of contact will be for consumers and businesses.

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?

We agree with option 1 subject to adequate protections being in place for consumers.

Chapter 3

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 FSMA-style regime may suit larger organisations but may not be effective for smaller businesses. A small business could operate an extensive website that could cause many problems for consumers. They will not be routinely visited as they are now by Trading Standards Officers. Local input will be vital in highlighting problem areas as they arise.**
>
> **There is an emphasis on businesses rather than on individuals, who can generate a lot of complaints and then move on.**
>
> **There will not be the same information gathering powers such as the OFT's CRW website where prosecutions are recorded and the OFT can use this information to determine the defendant's suitability to hold a consumer credit licence. We are not sure how this will be integrated into the FSMA-style regime.**

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 agree that the processes can provide useful mechanisms for consumer credit regulation but they are tailored towards large compliant businesses. The same mechanisms may put some small companies out of business due to added costs and bureaucracy and this would be contrary to the Government's policy to support small businesses in order to create new jobs.**
>
> **If fees increase considerably, there will be cost implications for both the businesses concerned and their customers.**
>
> **Enforcement at Trading Standards level is already risk based and Authorities follow a published Enforcement Policy.**
>
> **We are concerned by the uncertainty of a rules based statutory process as rules can easily be changed. The market place will need to be closely monitored to ensure the rules are still relevant.**

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

> **The fees need to be fair and affordable for small businesses.**

19. The Government welcomes:

- Evidence relating to experiences of the current appointed representative regime;
- Views on how 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 cannot comment on these points.

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.

We have no issues with group licensing at present but it would depend on who was in the group.

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.

This is good for compliant companies.

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.

No. They should all be covered.

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?

The FSMA is good legislation but it needs to go further in order to deal with, for example, repeat offenders such as phoenix companies. We still think there is a need to keep some criminal and civil sanctions.

Chapter 4

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

If all agreements transfer to the new regime, they will need equal protection. The impact on consumers is not explained and it could leave them in a worse position. There will need to be a cut off date from which new agreements fall under the new rules.

The enforceability of agreements will also be subject to unfair contract terms regulations and general contractual obligations.

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.

Refunds should be available for licensees who will not be able to transfer to the new regime for example credit brokers who may be classed as appointed representatives under the new rules.

Currently, the OFT consults with Trading Standards on whether an applicant is fit to hold a consumer credit licence. This facility could be extended to the new regime to determine which categories of licensed firms could be the subject of a modified approach.

It is not clear what will happen to an open application for a consumer credit licence. Will it be transferred over to the new system with any associated intelligence?

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

We feel that this is a question to be answered by businesses.

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

This has already been covered in Question 7.

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.

We believe that the 2000 transition went well and we would hope that consumer credit customers receive the additional benefits afforded by the FSA to insurance customers. We also had the April 2008 transition of consumer credit complaints to the Financial Ombudsman Service and that also seems to be working to the advantage of most consumers.

Yours faithfully

Patricia Hampson
Lead Officer TSNW Finance and Credit Group

trowers & hamlins

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Dear Sirs

A new approach to Financial Regulation - Consultation and Reform in the Consumer Credit Regime

We have write with reference to your consultation dated December 2010 consulting on reforming the Consumer Credit Regime.

We act for a number of Registered Providers of Social Housing (RPs – formerly RSLs), private developers and for the Homes & Communities Agency in setting up and managing products which allow individuals to purchase residential property by way of equity loans. Equity loans are second charges registered against the title to the relevant unit and which secure a percentage of the value of the unit at any one time.

Currently, these second charge equity loans are regulated by the Consumer Credit Regime and we work with the OFT to ensure compliance by our clients with the Consumer Credit Legislation when setting up and managing these products.

We are concerned as to the proposals for bringing the second charge lending market in to the FSA regime and making it subject to the FSMA legislation. We acknowledge that this question does not formally form part of your consultation but would like to use this opportunity to raise our concerns with this proposal.

Products such as Homebuy Direct (which is a Homes & Communities Agency grant funded product) and other similar products launched by RPs and private developers independently have had a significant impact on sustaining the residential property market in the current economic climate. We understand from data prepared by Hometrack that of the top 5 developers 30% of their residential sales in the last year was funded through equity loan products. We consider that requiring a second charge lender to be FSA regulated will introduce a significant barrier to these products, which will have an adverse impact on the already slow recovery of the residential market.

We consider that FSMA regulation of second charge lending by way of equity loan is not appropriate for the following reasons:

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1 RPs and private developers who offer equity loans are not in the business of providing financial services. FSMA regulation is very complex and requires an in-depth knowledge of financial product. It would require significant time and administration to regulate organisations whose only FSA activity is entering into second charge loans. The additional administrative burden would make this highly unattractive for any relevant organisations.

2 Individual consumers are already adequately protected when entering into a second charge equity loan. The consumer credit legislation required detailed information as to the amount of credit provided, the repayments and example interest rates. We have worked with the OFT to develop a detailed example sheet which is provided on all equity mortgage products to individuals and which clearly explains how the product works. Organisations who hold consumer credit licences are subject to spot checks by the OFT so there is already an adequate supervisory regime.

In the case of RPs, they are already regulated by the Tenants Services Authority so there is already a regulatory body carrying out a supervisory role.

For the reasons set out in this letter, in our view bringing second charge lending within the FSA regime would not receive the policy objectives set out on pages 13 and 14 of your consultation paper. It would lead to a significantly increased regulation of a product which already has adequate protections in place, and the increased regulation is not proportionate to the activities which these organisations get involved in.

If the Government considers that second charge lending should be bought within the FSA regime then we request that there is an exemption for second charge loans which are taken out by individuals on purchasing the property and are taken out with the Seller or developer of the unit.

We also request that the current exemption of RPs and the Homes & Communities Agency is extended to ensure that no second charges entered into by such entities are FSA regulated activities. RPs are required to comply with the mortgage sales guidance issued by the then ODPM when entering into first charge loans and we consider that this should equally apply to second charge lending should this be bought within the FISMA regime.

We would also like to write in relation to the confusion as to the interaction between the Consumer Credit Act and the FSMA regimes. If the Government do take the decision to regulate second charge lending then we consider it should be make clearer in the legislation as to whether or not the Consumer Credit Act applies to organisations who are not required to comply with FISMA as a result of an exemption. In our view this is currently unclear in the legislation.

Under Section 6(C) of the Consumer Credit Act 1974 the Act does not regulate a Consumer Credit Agreement if it is secured by a Land Mortgage and entering into the agreement as Lender is a regulated activity for the purposes of the Financial Services and Markets Act 2000.

Entering into an first charge mortgage would not be a regulated activity if entered into by an RP as Lender because of the exemption under FSMA. In our view, the Consumer Credit Act should apply to any first charge or second charge lending which is not regulated by the FSA under FSMA and we consider that this is what the legislators intended. However, we consider that this should be made clearer in the legislation.

We would be happy to discuss the contents of this letter and the writer's details are given above.

Yours faithfully

Trowers & Hamlins

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10 March 2011

Re: A New Approach to Financial Regulation: Consultation on Reforming the Consumer Credit Regime

The UK Cards Association is the leading trade association for the cards industry in the UK. The Association is the industry body of financial institutions who act as card issuers and/or acquirers in the UK card payments market. It is responsible for formulating and implementing policy on non-competitive aspects of card payments. Members of The UK Cards Association account for the majority of debit and credit cards issued in the UK, issuing in excess of 58m credit cards and 79m debit cards, and covering the whole of the plastic transactions acquiring market.

The Association promotes co-operation between industry participants in order to progress non-competitive matters of mutual interest and seeks to inform and engage with stakeholders to advance the industry for the ultimate benefit of its members' consumer and retail customers. As an Association we are committed to delivering a card industry that is focused on improved outcomes for the customer.

We welcome the opportunity to respond to this consultation and would also look to assist BIS and HMT as drafting of any rules or regulations is undertaken.

In seeking to respond to this consultation there are a number of key points that we would wish to make and these are addressed in this response. We believe that the key points that follow will address those areas identified in the consultation document questions. We will be responding to the HM Treasury consultation document *A new approach to financial regulation: building a stronger system* separately to provide our views on the scope and remit of the FCA.

Yours faithfully

Jacqui Tribe
Manager, Legal, Regulatory & Schemes

THE UKCARDS ASSOCIATION

1. Management Summary

The UK Cards Association is very supportive of, and sees clear benefits in, the adoption of a single regulator for the credit industry. We therefore welcome the establishment of the FCA in this regard.

Notwithstanding our view on a single regulator, we do not believe that it is appropriate for the FCA to act as a 'consumer champion'. There are already a number of bodies who would claim to fulfil this role. Being a 'consumer champion' would compromise the objectivity and neutrality of the FCA in carrying out its regulatory functions.

Neither do we consider it an effective use of resource (for all stakeholders) to 'rip up' the existing rule book i.e. the CCA. Rather, we would encourage Government to embrace the existing and well-tested regime and look to guidance and industry codes of practice where appropriate. A proportionate approach based on a sound business case and cost benefit analysis would be our preference.

The UK Cards Association would welcome the opportunity to work with Government and others once the appropriate approach has been identified to ensure an effective transition and workable provisions.

2. Introduction

The UK Cards Association remains of the view that a single regulator is a sound idea in principle removing many of the concerns such as multiple regulators, the risk of inconsistency, conflict and ambiguity of the existing oversight regime, which are shared by lenders in the current consumer credit environment. That said, the card industry would urge caution in rushing in to an approach that demands the wholesale 'ripping up' of the current legislative regime and starting again without the necessary analysis to justify such an extreme course of action.

We welcome the opportunity to comment on the proposals for reforming the consumer credit regime and would hope that Government continue to adopt a consultative approach with stakeholders as changes (rules, regulations, etc.) are considered and developed; The UK Cards Association would very much like to be a part of the ongoing work to deliver the FCA and any resultant changes to the regulatory regime.

The UK credit market is highly developed and sophisticated, having evolved over a number or years and based on a well established and robust regulatory framework which is complemented by voluntary codes of practice which are recognised to be exemplar. The unsecured credit market in the UK is very discrete and distinct as compared to other financial service provision, as lenders take upon themselves all of the risk rather than the consumer.

Much resource has been invested in developing the UK credit market to today's position and, in the main, we believe it works effectively, facilitating competition, innovation and technological development. Whatever approach is adopted, we believe it must recognise the importance and sophistication of the credit market and not result in inadvertent consequences that could make certain types of business model or product less viable.

As Government will appreciate, the credit industry has been subject to continuous scrutiny and regulatory change particularly over the last decade. The most recent in a long line of changes – implementation of the Consumer Credit Directive – have only just been implemented in the UK and therefore have not yet had time to bed down, so the impacts and benefits are yet to be quantified and/or delivered. Given the significance of the systems developments and changes in procedures that creditors have been required to adopt, we believe there is a need to allow a period of stability to fully assess the impact of the Directive's requirements.

In light of the above and the more detailed comments that follow, our preferred approach would be for a single regulator but retention of the existing regime, i.e. CCA, or something akin to this approach, rather than a more sweeping change where it is as yet unclear as to the benefits that are expected to accrue.

At most, and within suitable timeframes, a review of the CCA may be a more appropriate course of action.

3. *The Role of a Single Regulator*

As indicated, UK Cards Association Members support, in principle, the concept of a single regulator. The current regulatory regime is fragmented and, we believe, confusing for consumers and financial institutions alike. At present it would appear that there is no single point of accountability or consistent market oversight. As a consequence of this, for consumers, it can often be unclear regarding which regulator is responsible for any particular aspect of a firm's business; for financial institutions, there is a significant risk of double (or potentially triple) jeopardy where there is a blurring or conflict of responsibility, 'scope creep', or inconsistent interpretation of the more general regulatory requirements.

A regulatory framework that seeks to remove unnecessary regulatory burdens and duplication while providing clarity for both the consumer and business is one that the UK card industry would welcome. However, key to this position is the adoption of effective rules and a proportionate approach.

We are extremely concerned by suggestions that the FCA should have a 'consumer champion' role or function; this is a view that we understand has also been voiced by the Treasury Committee[1]. We firmly believe that to position the FCA in this capacity removes, to a large degree, any neutrality, objectivity and impartiality that we consider are key to a regulator's role. To be a consumer champion detracts from, and conflates with, what we see as the primary function – that of consumer protection, which we believe should be at the heart of the FCA's role.

With the difficulties experienced throughout the financial sector over the last couple of years we believe that the key focus for Government should be in rebuilding trust in the sector and in the regulation that underpins it. A single regulator approach would, we believe, facilitate this but we would also refer to our subsequent comments regarding a principles-based approach versus a rules-based approach.

A single regulator brings with it a more integrated and consistent approach, and would be responsive to a changing environment and changing demands of consumers and stakeholders alike. It would also enable a more holistic view to be taken which we see as positive with issues that impact the industry in general (e.g. concerns over the way in which some Claims Management Companies operate). We are therefore supportive of this approach.

4. *Merits of the Current Regime (CCA)*

From a UK Cards Associations Members' perspective, we would regard the current regime as an aggregation of the Consumer Credit Act supplemented by industry best practice and voluntary codes[2], together with regulations such as the Irresponsible Lending Guidance and PSRs, and case law.

[1] Seventh Report - Financial Regulation: a preliminary consideration of the Government's proposals
http://www.publications.parliament.uk/pa/cm201011/cmselect/cmtreasy/430/43002.htm

[2] Such as The Lending Code sponsored by BBA, BSA and The UK Cards Association and monitored/enforced by the Lending Standards Board; and the FLA Code

Our primary concern in considering the options outlined within the consultation document is understanding the basis on which Option 1 is favoured. It would appear that option 1 proposes the repeal of the CCA, effectively the 'ripping up', of a significant swathe of consumer credit legislation and replacing it with a FSMA-style principles-based approach to regulation, which has not always been as effective as it should be, in this area.

We do not believe that the current regime is broken and are puzzled as to what is believed to be fundamentally wrong with it. The consultation document implies weaknesses in the current method of regulation but does not appear to document the inherent problems the regime that a change in model would seek to address. Whilst we have lobbied on various aspects of the Consumer Credit Act where it does not necessarily reflect the current operating environment and is not always framed in the most effective or proportionate manner, the CCA has underpinned consumer credit lending in the UK for almost 40 years. It provides a degree of consistency of approach that would, we believe, be enhanced if it were to be applied and enforced by a single regulator approach rather than the piecemeal approach that is currently in place.

With the introduction of the Consumer Credit Directive into UK legislation, consumers have a comprehensive level of protection when entering into, and during the lifetime of, a credit agreement. With this level of protection, and while acknowledging the unnecessary layers of regulatory intervention from a consumers' perspective, we struggle to understand the consumer detriment that is being addressed by the proposal that CCA should be repealed and replaced. We would welcome further articulation of the issues of concern that are not already addressed by (i) existing legislation; (ii) introduction of the CCD (which we believe must be allowed to bed down); (iii) commitments given by the card industry[3]; (iv) other regulation; and, (v) industry codes of practice.

Whilst it could be argued that the current regime is not perfect, it combines prescription through the CCA with the flexibility of guidance and voluntary codes where appropriate or where change to primary legislation is not appropriate or practical. With the exception of concerns over the number of regulators potentially involved in the process, the approach appears to work. We are therefore unclear as to the benefits to consumers or industry that will be derived from a significant upheaval.

We would therefore seek clarification as to the systemic issues and concerns that suggest the need to completely change the way in which the credit market operates.

[3] Such as the joint agreement between Government and the credit card industry dated 15 March 2010 providing 5 new rights for customers

5. *The move to a Principle-based Approach*

If we assume a move to a principles-based approach as we believe is the implication of option 1 of the consultation document, then there are a number of challenges that have been highlighted by our Members that we would wish to obtain comfort/certainty on. These are as follows:

Dangers of Retrospection

We believe that in the event of a new approach to the credit regime being adopted, clear provisions must be made as to the retrospective applicability of rules etc. There is a real risk that if clarity is not provided, lenders could find themselves with claims for unenforceability, etc. where new requirements are applied retrospectively to existing agreements. This must be avoided at all cost.

This could also be the case where, as a result of specific detail, the regulator must, over time, provide clarity on those areas subject to different interpretation amounting to regulatory guidance which, in itself, results in retrospective rule making. This increased risk of retrospective regulation is unpredictable and would appear unfair and inequitable to the industry.

Transition/Implementation Timescales

As highlighted in other sections of this response, a significant step-change from the regime in which lenders currently operate would require a period of transition. Until detail of what the new regime might look like becomes available it is difficult to assess the implications. However, from experience of CCA and CCD migrations, lenders require a period of not less than 18 to 24 months after certainty of provisions to facilitate the necessary specifications, undertake systems changes and testing, make collateral amendments and ensure comprehensive staff training. This suggests that an implementation date of 2014 is, at best, challenging, and, more likely, impractical to achieve.

If the ultimate decision is to fully embrace option 1 as detailed in the consultation, then careful consideration must be given to the transition period and how it will be implemented. It is by no means clear yet whether a gradual transition could work or whether there would need to be a 'big bang' change, or what issues are raised by each approach.

EU Directives

Thinking in particular of the recent implementation of the CCD, it is difficult to see how many of these requirements would be embodied within a principles-based approach. In particular, as a maximum harmonisation Directive, we believe it would be necessary to 'lift and drop' the specific Directive provisions and this does not seem to lend itself to option 1 but to a more rules-based model.

Irrespective of the fit, we would argue that, at most, the FCA regime could operate with the Directive provisions but could not adopt any form of gold plating (which we understand is not the Government's intention). We would welcome clarity on how it is envisaged that a maximum harmonisation Directive such as the CCD can sit alongside principles-based regulation.

Benefit to Consumers

The UK Cards Association believes that the benefit to consumers of such sweeping changes must be clearly identified and articulated to stakeholders. Ultimately, the questions that we believe are fundamental to the debate and therefore must be addressed are:

- What is the detriment being addressed by the proposals and what benefits are expected to accrue?

- Is the solution proportionate to the effort required to deliver the benefits to stakeholder?

The UK Cards Association does not consider there to be such widespread problems with the current regime that result in significant consumer detriment that can not be addressed under the present regime. Neither does the Association or its Members consider that the adoption of Option 1, in its entirety (as defined in the consultation document), provides a proportionate solution when assessing the cost of delivery against the intended benefits.

Case Law and Legal Precedent

Of grave concern to industry is the potential loss of a significant tranche of case law and precedent that has built up over the years if the credit regime moves to a principles based approach. While we appreciate that the case law still exists, its applicability in a principles-based environment must be questioned. Such case law and legal precedent underpins the way in which industry operates, the business models that have evolved and the interpretations applied by stakeholders.

Flexibility

We recognise that a move away from the current regime could offer greater flexibility for products and innovation in the market, although we believe this might be stifled in the short term as lenders will not want to develop products until they know what they will be measured against.

However, even with the current regime (which is relatively prescriptive yet in places can be ambiguous and open to interpretation), the industry has found itself in disagreement with the OFT (and others) over interpretation of certain aspects of the regime, e.g. default fees, S75 applicability, calculation of APRs, etc. A move towards a principles-based approach is likely to exacerbate the type of uncertainty that results in this sort of action, which cannot be in the interests of either the industry or the consumer.

Gap Analysis

A concern has been expressed that in moving to a principles based approach some important consumer and lender protections could be lost. It is essential that a full/comprehensive gap analysis is conducted to ensure that this is not the case.

6. *Role played by voluntary codes*

Irrespective of the approach ultimately decided upon, we believe that there is a role to be played by voluntary codes of practice.

Voluntary codes have demonstrated their flexibility and responsiveness to change and emerging issues far more effectively than primary or secondary legislation as they are not restricted by legislation. An important part of voluntary industry codes is their ability to offer a vehicle to embody industry best practice within a formal monitoring and enforcement regime. In addition, industry codes facilitate the formalisation of provisions and requirements that do not lend themselves to other delivery channels, e.g. requiring changes to primary legislation.

We would therefore encourage consideration of how the future structure could accommodate retention of industry codes of practice as we do not believe it would be in the interests of stakeholders to lose the benefits and protections that are offered through the various codes.

7. *Other Considerations*

In considering and delivering what is best for all stakeholders, The UK Cards Association believes that there are other factors that need to be taken into account and are part of the overall framework for a robust consumer credit regime moving forward.

The Role of the Financial Ombudsman Service

There is a significant element of the work conducted by the Financial Ombudsman that is inextricably linked with what happens in the consumer credit market. This is true both in terms of the upcoming issues that the Ombudsman sees in its case files and the ways in which we are currently seeing the Ombudsman Service being abused by the likes of Claims Management Companies where loopholes and/or grey areas in legislation are clearly being exploited.

We believe there is a very strong case for more formally incorporating the Financial Ombudsman regime within the regulatory structure, i.e. under the auspices of the FCA, to ensure a degree of consistency of approach/interpretation; to provide a clear message that the rules (however delivered) will be interpreted in a consistent manner; and to provide an easier mechanism for exchange of intelligence between the appropriate 'authorities' where evidence of abuse is identified.

We appreciate that the interface between the FCA and the Financial Ombudsman Service is covered within the HM Treasury consultation and will provide more detailed comments in our response to that consultation document.

Compliance Effort

There will be significant compliance effort required from lenders to move from the existing regime to one adopting a principles-based approach. We believe that a full cost benefit analysis of the impacts of compliance on lenders should be fundamental to a decision being taken.

Role of Other Regulatory Requirements

It is unclear to us whether regulatory requirements such as the OFT's Irresponsible Lending Guidance can exist in an environment where the Consumer Credit Act does not exist. In a principles-based regime we do not believe that the necessary legislative provisions will exist to support such guidance.

'One Size Fits All' Approach

The consumer credit market is sizeable and is made up of a number of players of significantly differing sizes and business models offering a wide range of products. A 'one size fits all' model can only work is there is sufficient flexibility to acknowledge the difference in operating practice that result. Failure to do so could result in inadvertent consequences, for example, the withdrawal of players and/or products from the market to the detriment of the consumer or for some restructuring so as to stay outside of the more formal regulatory regime.

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

Submission to HM Treasury by Virgin Money

Preferred option

Virgin Money supports the Treasury's recommended option:

"Option 1: a regulatory regime for consumer credit under the CPMA within a legal framework based on the model set out in the Financial Services and Markets Act 2000 (FSMA) and therefore consistent with the regulation of other retail financial services"

Virgin Money has two principal reasons for supporting this option:

Flexibility

As suggested in the consultation paper's executive summary, the proposed rules-based approach would be more flexible and responsive. It would be easier to amend an approach based on the FSMA model than it is to amend primary legislation. The limited flexibility of the CCA approach is underlined by the extended period between the Consumer Credit Act 1974 and the Consumer Credit Act 2006.

While supporting a regulatory regime based on the FSMA model, we suggest the use of a term other than "rules-based", given discussion in HM Treasury's document on the intended new approach to financial regulation (to which reference is made in paragraph 1.4) about the need for judgement rather than simply tick-box compliance. Also, as stated in paragraph 1.11, consumer credit regulation is already complex, and the objective should be to clarify and simplify (i.e. Objective 3), rather than to impose more and more rules.

Although there are clear advantages in a more flexible and responsive regime, we suggest that consumer credit regulation should not be changed too frequently. Changes in regulation can be burdensome for all providers, and might be particularly difficult for small providers which contribute to a diverse and competitive market.

De-duplication

While noting comments in paragraphs 1.2 and 1.17 about potential difficulties arising from different regulatory regimes, we have experienced no great difficulties in working with multiple regulators and regulations. Consumers need not be aware that different aspects of some products fall under different regulators; if they have any issues that they cannot resolve with their provider, they should contact the Financial Services Ombudsman, not the regulator.

However, while we have not experienced major difficulties, we support the elimination of duplication and complexity which have arisen through historical developments over many years. In particular, we look forward to working with the CPMA as a single regulator, especially in products such as current accounts and credit cards, where, under current arrangements, different regulators are responsible for different aspects of the same product.

Transitional arrangements

We welcome the intention to consider carefully, if Option 1 is supported, how best it should be implemented, and over what period, and to engage in further consultation about transitional arrangements, as proposed in the covering letter to the consultation paper.

A concern about transition to rules-based regulation by the CPMA is that it could impose additional requirements on lending intermediaries and small providers, and could have the unintended consequence of reducing the supply of credit and competition. To limit this risk, we make the following two suggestions:

- The level of regulation by the CPMA of all providers of consumer credit should be set such that it does not put unreasonable additional pressure on small providers not currently subject to FSA regulation, but that it does ensure adequate controls on all providers, for example in relation to how they can recover amounts owed to them.
- In the move to regulation by the CPMA, the regulations should not be amended except to the extent necessary to achieve a single regulatory regime for all providers of consumer credit. In this context, consideration should be given, in the further consultation, as to whether it really is better to incorporate changes arising from the review of consumer credit and personal insolvency at the same time (as suggested in paragraph 1.6), or to address one of the issues before the other.

Consumer Credit Directive

The benefits of creating a more flexible and responsive regulatory regime may be constrained by the need to continue to comply with the prescriptive requirements of the Consumer Credit Directive, even if the Consumer Credit Act is repealed. Considerable effort has been required to ensure compliance with the Directive, although, in our view, the changes have not made a significant improvement in disclosure and transparency to UK consumers.

Given that the Consumer Credit Directive requirements were incorporated in the Consumer Credit (EU Directive) Regulations 2010, before the current proposal to create a more flexible regulatory regime, we suggest that the FSA, or its successor body the CPMA, should reappraise the UK national implementation of the Consumer Credit Directive.

CONSUMER PROTECTION & MARKETS AUTHORITY
[Financial Conduct Authority]

From: **VOSS FINANCE LTD**

RESPONSE to

A new approach to financial regulation:

consultation on reforming the consumer credit regime

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or

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16 March 2011

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

Voss Finance 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.

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 with only 3 employees with turnover less than £1m dealing in, principally, hire purchase facilities on vehicles for consumers and business assets for smaller businesses.

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.

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

Simon Gregory

Simon Gregory
FINANCE MANAGER

CONSUMER PROTECTION & MARKETS AUTHORITY
[Financial Conduct Authority]

From: Webb Hire Purchase Co. Limited
4 Waterloo Road, Burslem,
Stoke on Trent, ST6 3ES

RESPONSE to

A new approach to financial regulation:

consultation on reforming the consumer credit regime

18 March 2011

Consultation response from Webb Hire Purchase Co. Limited, *t/a Webb Financial Services*, on “a new approach to financial regulation: consultation on reforming the consumer credit regime”.

Webb Financial Services 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

Incorporated forty years ago, Webb Financial Services provide consumer credit by way of hire purchase, home improvement credit and personal loans. Our long-serving staff presently number four and the personal service given together with very competitive terms for credit is appreciated by our customers, some of whom have remained loyal to us for more than twenty years.

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.

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

Alan Cliffe

Director

Consultation response

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

DATE: 11 March 2011
RESPONSE BY: Vera Cottrell
Principal Policy Advisor
Which?
Vera.cottrell@which.co.uk

Which? is an independent, not-for-profit consumer organisation with over 700,000 members and is the largest consumer organisation in Europe. Which? is independent of Government and industry, and funded through the sale of Which? consumer magazines, online services and books.

We welcome the opportunity to respond to this consultation. Whilst we support a single regulator for Consumer Credit issues we do not support a full transition to a FSMA-style regime. Removing the key consumer protections provided by the Consumer Credit act by moving to a more principles-based rulebook regime risks greater uncertainty for consumers and lower standards of consumer protection.

However, we see benefits in applying a supervisory approach to consumer credit issues which makes greater use of thematic work, mystery shopping and conduct risk analysis. The local nature of some consumer credit problems (such as loan sharks) combined with the large number of small businesses operating in this sector supports a continuing role for trading standards.

<u>Answers to specific questions</u>

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

We largely agree with the assessment of the market and welcome the intention expressed in the proposals to improve the regulatory regime for consumer credit.

Which? has repeatedly expressed concern that competition in the banking sector has been significantly reduced by the financial crisis and the merger and take-over of several banking institutions. Consumers have seen a significant reduction in available credit in conjunction with an increase in cost. The average APR on new cards is now around 17% above base rate. We have also seen an increase in the number of unsecured credit products that are tied to another product. This development is likely to result in reduced competition in the unsecured consumer credit market. There has also been significant detriment to consumers stemming from the ability of lenders to vary rates in a non-transparent way and without giving sufficient reasons to consumers.

We are also concerned about the abundance of auxiliary charges in the consumer credit sector ranging from unauthorised overdraft to non-usage charges on credit cards. We agree that the consumer credit industry is constantly evolving but not always in line with consumer protection and interest. This illustrates the need for a regulatory regime that is set up to ensure that consumers receive good outcomes.

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?

We agree in part with the assessment of the problems, especially with regard to the assessment that the current regime is too reactive and insufficiently flexible. We have also in the past expressed our concerns about the OFT's lack of adequate resourcing and can see benefits in having one single regulator for consumer credit.

However, we disagree that being a 'deterrent to deregulation' is a downside of the current regulatory regime. Unsecured consumer credit and affiliated services are the source of significant consumer detriment not only due to the mature of the product provided but also the type of consumers who are more likely to use unsecured consumer credit products.

The market has also seen a number of new products developing over the last few years like payday and SMS loans which make access to credit easier but often do not lead to a positive consumer outcome. Deregulation should therefore not become an aim in itself but should follow on as a result of improvements of the consumer experience in the market.

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.

Risks faced by consumers revolve around the following issues:

> Unfair and non-transparent charging structures: this is an issue with several credit products but particularly unauthorised overdrafts and we would refer you to our response to the BIS Call for Evidence on consumer credit and personal insolvency in which we have provided detailed evidence of the changes in the market.

> Selling practices: various forms of consumer credit are sold by staff who may lack the necessary understanding of the product. A key example, would be store cards which are sold by members of staff who tend to have no background in financial services and very basic training[1]. This may also be the case where the consumer credit is a secondary purchase such as in the motor finance sector.

> Lack of competition in the market and increases in the cost of consumer credit: consumers are resorting to niche products like payday loans evidenced by the significant increase in payday loans referenced by the consultation document. Access to credit is made easy but the cost is very high and charging structures can contribute to the debt problems many consumers are already experiencing[2].

Key provisions for consumer protection under the current regime and their effectiveness in securing appropriate outcomes for consumers:

In our view the following key protections provided by the Consumer Credit Act have to be preserved by any regulatory regime to ensure adequate consumer protection:

- CCA agreements need to contain set information in a set format. This provides clarity to consumers and consumers know and recognise them now. There is some value in that. It also allows easy comparison e.g. the APR has to be clearly stated, along with the term, regular payment amounts etc.
- Strong sanctions in the event of breach by the lender e.g. if agreement not signed by both parties; debtor is not provided with a copy of the signed agreement; the required information is not provided on the agreement; lender does not provide the regular statements as required and so on.
- Section 75 protection and the additional protection under s75A
- Unfair relationship test under s140

[1] Trouble in store, Which? magazine December 2009

[2] Best and worst ways to borrow in 2009, Which? magazine February 2009; Pay day loans can cost a fortune, Which? magazine March 2011

- Section 56 - antecedent negotiations - essentially this makes the lender liable for any misrepresentations made by its agents that sell the finance. This is most relevant in the context of new cars where the garage selling the car is also selling the finance and so is agent for the lender.
- Cancellation rights for credit agreements signed off-premises
- Rules on early termination of hire purchase/conditional sale agreements - the 'one half rule' and the 'one third rule'.

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

We welcome the objectives stated in the consultation paper but would like to reiterate our concerns about making deregulation an objective in itself.

We would also refer you to our response to the White Paper on financial regulation in which we have set out our views on the overall objectives for the new regulatory body.

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.

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.

Trading Standards Services

TSS have an important role to play under the new regulatory regime in dealing with the large number of small firms which are currently licensed under the regime. It is therefore important that the service is adequately resourced.

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.

It is important that any transfer of regulatory responsibility to the FCA does not reduce the overall level of consumer protection.

Consumer redress: The CCA is focused around sanctions for non-compliance and enforcement by consumers. These include the sanctions where a breach makes the transaction void or unenforceable. It is essential that in the event of reform these direct rights of action are retained. A regime where regulatory action by the FCA is the only remedy could be bureaucratic and increases the risk that the regulator may not take action because of the costs or risks that it may not be successful. Relying on regulatory action also leads to firms trading off or negotiating a settlement with the regulator which does not involve full redress for consumers as they will be aware that the regulator may not have the resources to pursue a full settlement. There is also a substantial risk that the regulator would not take effective and/or transparent enforcement action because this may have a detrimental effect on its 'open and co-operative' relationship with firms which it believes it needs for its supervisory approach.

Small business: A transfer of Consumer Credit regulation to the FCA will bring a substantial number of small businesses within the remit of the regulator. Many of these may be sole traders and some may be local businesses in areas not traditionally visited by the regulator. In other businesses, Consumer Credit related issues may only be a small proportion of their business. Trading standards are currently in a unique position to tackle these businesses and bringing everything together under a national regulator runs the risk that local issues might not be seen as a priority. Any new regime needs to ensure that both the FSA and local trading standards can take enforcement action.

Perimeter enforcement: The regulator will need to take action against lenders who operate outside the law (such as loan sharks). Again, these organisations will mainly be local in nature and would probably be best tackled by local teams involving the police than through a national financial services regulator.

Financial promotions: Whatever the decision made on the overall framework the Government should ensure that the regulator is able to publish the circumstances surrounding occasions where it has required a firm to amend or withdraw a financial promotion.

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.

We have no comments.

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 are concerned that the increased flexibility which could be provided by a rules-based regime could have negative implications for consumers. The experience of the FSA's move to principles-based regulation has been that in some areas it has reduced certainty for both consumers and firms. In too many circumstances firms were left to interpret what was meant by the new principles which had the potential to lead to an inconsistent approach and weaken standards of consumer protection. The potential for a principles and rules based regime to be supplemented through industry guidance introduces a further significant weakness into the system. Our experience of 'industry guidance' confirmed so far by the FSA has been that they involve short periods of consultation and lack robust action to improve consumer protection. It would be totally inconsistent to move to a more principles-based approach, whilst allowing the industry control over the detailed requirements of 'industry guidance'.

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

We see benefits in a move to a FSMA-style supervisory approach for consumer credit. This should include applying its 'conduct risk' approach which flags up emerging risks and issues to consumers. There would also be potential benefits from undertaking 'thematic work' examining common issues across a broad spectrum of firms (such as the FSA's work on complaints handling).

The FCA should adopt the recommendations laid out in our response to the April White Paper including a more proactive and transparent approach to supervision and enforcement. The regulator should also make greater use of 'mystery shopping' to test the treatment received by consumers.

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.

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 Governments objectives (as outlined in paragraph 1.18 of Chapter 1)?

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?

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?

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?

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.

We favour a single regulator for Consumer Credit issues but do not support a full transition to a FSMA-style regime. A full transition to a FSMA-style regime risks greater uncertainty for consumers and a removal of the specific consumer protections provided by the CCA regime. While we acknowledge that the FCA is intended to take a more proactive and interventionist approach to regulation, it would be more appropriate to wait until this is established before moving to a full FSMA-style regime. The experience of the transition to the Banking Conduct of Business regime is that firms will use a shift to a FSMA style rulebook to dilute standards of consumer protection and the specific protections provided by rules.

Moving from the CCA to a FSMA-style regime would be a shift to principles-based regulation which risks reducing certainty for consumers and firms. There is no evidence that the FSA's 'Treating Customers Fairly' initiative has led to a substantial improvement in the outcome received by consumers. As Which? pointed out when the FSA was introducing the TCF regime there was a risk of the regulator devolving more responsibility to firms for interpreting regulation before ensuring that sufficiently robust discipline and enforcement measures are in place to provide a deterrent against firms exploiting less intrusive regulation.

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?

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

We have no comments

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.

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.

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.

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 concerned about the effects of deregulation on consumers. Smaller firms and firms for whom consumer credit related activities are a marginal activity can still be the source of significant consumer detriment. The FSA's and HMT's work on travel agents selling travel insurance has shown how companies can cause significant consumer detriment through one of their 'marginal' activities. In this case, the decision was taken that rather than to deregulate more stringent regulation was the best way forward for consumers.

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?

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

Consumers should not experience a reduction in consumer rights by the new regulatory regime or a loss of any rights under existing agreements. Equally, lenders should not be able to force a new agreement on a borrower just so they can take advantage of the new regime. Consumers should be able to benefit from new protection afforded to them under the new regulatory regime. The issue of credit card agreements has to be looked at with particular care as such agreements can be long-standing.

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.**

We have no comments.

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

We have no comments.

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

We have no further comments.

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.

We have no comments.

To whom it may concern,

I am an independent financial adviser and although I do not have a consumer credit licence nor get involved in leading money directly, I see all too often the consequences of people over stretching themselves financially.

It seems obvious to me that we need to change the way money is lent in the UK, it is clear that individuals are no longer responsible, the majority have a want it now and therefore borrow to get it attitude, which seems at a stark contrast to the attitude of our parents who would save up to be able to afford something.

If individuals are not responsible, I believe that the state must enforce a level of control, we can not allow individuals to borrow excessively as it ultimately stifles growth in an economic downtown and leads to peoples houses being repossessed. How was it ever possible that a couple of years ago we heard stories on the news of individuals owing £30,000 on credit cards and personal loans?

I propose the following suggestion for your consideration. I believe that the amount of unsecured personal debt an individual can borrow should be linked to their salary/income. Consumer credit bodies can be used to ensure that individuals do not over stretching themselves by allowing banks to at the stage of loan application see the amount of available credit an individual has in total possible with other lending organisations.

The total amount an individual should be able to borrow should be around 10% of their annual salary.

It seems ludicrous that mortgages are regulated in this manner and FSA are looking at maximum income multiples but not for unsecured debt where you can borrow as much as you want as long as someone is prepared give it you.

This principle of lending a percentage of annual income could also be taken one step further and say that an individual can make a maximum of one or two credit cards and or personal loans at any one time. After all why does an individual need more than one card? This would then force competition through the marketplace hopefully forcing companies to lend more cheaply as the ability to lend has been reduced.

I look forward to your comments in relation to my response.

Kind Regards

Andrew Woolhouse
Independent Financial Adviser

[personal contact details removed]

AEON Financial Services
Sent from iPhone

YORKSHIRE AND THE HUMBER TRADING STANDARDS GROUP

Linking Trading Standards in Yorkshire and The Humber Region

By e-mail: financial.reform@hmtreasury.gsi.gov.uk

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

Date: 22 March 2011

Dear Sir or Madam

Re: Consultation on Transferring the Regulation of Consumer Credit from the Office of Fair Trading (and Trading Standards) to the new Consumer Protection and Markets Authority

Yorkshire and the Humber Trading Standards Group (YAHTSG) is pleased to provide the attached response to this consultation.

YAHTSG consists of the following Trading Standards authorities:
Barnsley MBC, Doncaster MBC, East Riding of Yorkshire Council, Kingston upon Hull City Council, North East Lincolnshire Council, North Lincolnshire Council, Rotherham MBC, City of Sheffield Council, North Yorkshire County Council, West Yorkshire Joint Services and City of York Council.

We hope you find our comments useful and if you require futher information we would welcome the opportunity to discuss the matter further.

Your faithfully

S Simmons

Suzanne Simmons
Regional Co-ordinator – Yorkshire & the Humber Trading Standards Group

c/o West Yorkshire Trading Standards Service
PO Box 5
Nepshaw Lane South
Morley
Leeds LS27 0QP

Consultation on Transferring the Regulation of Consumer Credit from the Office of Fair Trading (and Trading Standards) to the new Consumer Protection and Markets Authority

Chapter 1

Question 1

Broadly speaking this is a fair assessment of the consumer credit market although it seems unfair to make reference to the regulatory impact on business and consumers without further qualification. This is especially true when compared with the size of the market as outlined in paragraph 1.8. The importance of the credit market to the functioning of the UK economy has been shown to be critical and so the "burden" of regulation may not in fact be inappropriate. The regulation of credit necessarily carries a significant burden.

Question 2

Whilst in agreement with the assessment that the way in which consumer credit is regulated has caused problems, the paper has highlighted a number of points which bias the document against the CCA regime. An example of this can be seen in the phrase "Too Reactive And Insufficiently Flexible" where it is used as a criticism in cases where enforcement action may be subject to lengthy appeal, whilst in contrast, the FSMA regime has been characterised as being more proactive. This may be viewed as a reasonable assumption, however the FSMA regime would also appear to be inflexible. In a recent case brought to the attention of North Yorkshire and West Yorkshire Trading Standards Services, the FSA began a themed investigation into a financial product in late 2007 and did not issue final notices on the provider of the product until mid 2010. During this time the company was allowed to continue marketing the product resulting in further serious losses to consumers. The FSMA approach has also faired badly with other financial products such as Key Data and Arch Cru where collectively consumers have been exposed to millions of pounds worth of loss. The industry view of these losses is that they were caused by a lack of regulatory oversight and that the FSA only began to act on receipt of complaints. It is suggested therefore that the industry would seem to regard the FSA as having a reactive approach.

Split accountability is not necessarily a problem provided the split is clear and unambiguous with no overlap on responsibility. What is necessary are strong partnerships (see Question 6) and lines of communication which will benefit regulators, enforcers, advisers and most importantly consumers.

Question 3

- We believe that the Office of Fair Trading will be able to provide better information on risks faced by consumers.

- As regards key provisions for consumer protection under the current regime and their effectiveness in securing appropriate outcomes, then the Consumer Credit Act provides a degree of certainty and clarity for consumers and Trading Standards Services as enforcers. The Act provides core consumer protections as outlined on page 43 of the document. Key for consumers are Section 75 joint liability; Section 90 protected goods, Section 57 the ability to withdraw from an agreement and Section 140 the unfair relationship test are widely understood by many consumers and organisations, including those in the voluntary sector, which advise consumers. The fact that these are prescribed in law as opposed to a principle in a rule book makes it easier for consumers to enforce their rights without having to resort to discourse with the trader. We believe the value of this must not be in any way under estimated and there should be no dilution of these protections particularly some of the more recent ones such as the unfair relationship test which is beginning to achieve the type of effect intended.

- In response to the third part of this question we believe this is something that we are not able to answer.

<u>Question 4</u>
Whether or not the objectives can be appropriate or attainable without more detail is difficult to answer. As stated in the previous question there are certain consumer safeguards which we believe can not and should not be diluted. We are pleased to note that this aim is set out by the paper. Whilst a flexible and responsive frame work is desirable, as is simplification and deregulation, there is the danger that the certainty given by the existing Consumer Credit Legislation may be removed, resulting in confusion and disaffection amongst consumers. There is the possibility of a higher incidence of dispute between traders and consumers due to the lack of points of reference that specific legislation such as the Consumer Credit Act brings.

Chapter 2

<u>Question 5</u>
A unified regulatory regime for retail financial services may well deliver the outlined objectives however the need for suitably qualified and experienced staff who have the skills to deal with issues across all disciplines is crucial. It is noted that little reference is given in the paper to the ancillary credit activities - debt collection, commercial debt counselling and debt adjustment amongst others. The latter 2 categories commonly relate to high risk debt businesses such as commercial debt management, an industry which has grown considerably of late. Without knowledge of these specialist industries, the potential for wide scale consumer detriment consumers is massive.

<u>Question 6</u>
Currently the Office of Fair Trading and local Trading Standards Services (TSS) enjoy a successful partnership based on a high level of trust, co operation and synergistic working. It will be essential that this type of relationship is carried into the future under any regulatory regime. Currently the FSA has not shown any ability or desire to work with local TSS.

TSS are often seen as “the eyes and ears” of regulators such as the OFT, CIB and POCA and ECUs and provide valuable intelligence on what is happening at grass roots level. It is imperative that these relationships are maintained to provide valuable protection for the consumer. TSS execute important functions at a local level which central regulators are unable to do. Good examples would be an inspection at a garage where adherence to the applicable CCA provisions is checked; a swift response to consumer complaints by visits to high risk businesses such as debt management and are a vital source of advice to businesses particularly in specialist areas such as consumer credit.

TSS investigate all consumer credit licence applications, renewals and variations and would only be able to do this effectively by reliance on sound local knowledge. TSS conduct competency visits on behalf of the OFT in respect of the licensing of certain high risk groups such as debt collection companies, debt management companies and home collected credit. Areas in which the FSA would have little or no knowledge. There is no doubt that the discipline of applying for and holding a consumer credit licence ensures that only fit and proper persons hold a licence It prevents rogue traders entering into the industry and is effective in improving a licensee's behaviour which in turn reduces consumer detriment. TSS extensive local knowledge and expertise must not be undervalued.

Question 7

Should there be a transfer of consumer credit regulation, consumers should be given certainty in the protection they are afforded and the tools to enforce that protection. Currently the Financial Ombudsman Service is limited to awarding damages up to a level of £100,000 while the FSCS can only award in terms of investment up to a level £50,000 per person. The Government may consider an increase in the amount of financial redress which is available to consumers. This would benefit consumer protection as it would enable consumers to obtain redress if misled or mis-sold any financial product. An increase in the level of compensation would be likely to bring a degree of discipline to the financial services and credit services industry.

Question 8

We don't have any particular views on this question as we believe it is more appropriate that it be answered by a spokesperson for small and medium sized enterprises.

Question 9

In principle the idea of a rules based regime is attractive because of its flexibility. However, it is evident that the current rule books are extensive and potentially daunting documents. Furthermore, there have been few amendments to the rule books presumably due to the complexity of doing so and ensuring that the industry is made aware of the changes. The MCOBS rule book for example has had only had one amendment in 2007 since it was brought into being on 31st October 2004. In view of this we are doubtful that the overriding view in the consultation document which is that primary legislation is unwieldy and takes a long time to change is entirely balanced. The document is selective in that it identifies one particular problem and affords it larger significance than it has in reality.

Question 10

As reported in Question 2, there have been some recent well documented examples where an FSMA approach seems to have failed in spotting potential problems. It might even be said that the current financial crisis was caused by the FSMA model. A number of industry professionals are leading a campaign against the imposition of the current FSCS levy. They believe that the size of that levy is as a direct result of the lack of regulation exhibited by the FSA and have accused the FSA of negligence. There is a danger that in adopting the FSMA model which is one of supervision, risks may not be identified quickly enough and a risk that no advantage may be made by the adoption of this approach.

<u>Question 11</u>
It is a valid point that the OFT, in having responsibility both for consumer credit and general consumer protection, does enable it to secure certain advantages. It is difficult to see how the proposed new regime might continue to secure these advantages unless it were to retain some body of equal standing to the OFT within the new set up. This does not appear to be part of the current thinking.

<u>Question 12</u>
Whether or not the transfer of consumer credit regulation to an FSMA style regime will achieve the objectives set out in paragraph 1.18 of Chapter One is unknown, particularly in the area of effective and appropriate consumer protection. In terms of proportionality and cost effectiveness there is concern that the inevitable costs of an FSMA style regime will be borne by the small to medium sized businesses. It is also a matter of concern that the cost of operating a central FSA body is far greater than that attributed to the OFT.

<u>Question 13</u>
We have no further comments to make.

<u>Question 14</u>
The only specific issue is to ensure that current levels of consumer protection are maintained in which ever way possible.

<u>Question 15</u>
We believe that paragraph 2.4 sets out sufficient factors that the government should consider.

Chapter 3

<u>Question 16</u>
We have no specific views on this.

<u>Question 17</u>
A risk based approach to regulation is widely accepted as a good idea and a differentiated fee raising arrangements in respect of different sized enterprises never the less there is a question mark over whether this should have any effect to any proportionate approach been taken to the Consumer Credit Regulation. A small business for example might present a far greater risk to consumers and therefore it is difficult to understand that the nature of this question.

<u>Question 18</u>
The main two factors that we believe should be considered are the size of the enterprise and the potential risk to consumers.

<u>Question 19</u>
We have no comments to make in respect of current appointed representative regime.

Question 20
We have no comments to make in respect of current group licensing regime.

Question 21
The main problem with self regulatory codes is that in relation to lending they have proved to be ineffective in the protection of consumers. Provisions included in the unfair relationship test as provided by the Consumer Credit Act appear to offer far more effective protection for consumers.

Question 22
There are certain cases of low risk trade activities where deregulation could be considered appropriate. There are types of businesses which currently have to hold a license where the risk to consumers is minimal and therefore we believe there are certain categories or types of licence which may be considered for appropriate deregulation.

Question 23
We have no further comments to make.

Chapter 4

Question 24
The transitional arrangements for agreements will be critical. This is not to be under estimated. Any change is likely to cause considerable confusion and doubt in the mind of the consumer as to whether or not he should enter into a consumer credit agreement. Any changes should be minimal and any agreements already entered into should continue with the same protection given at the time the agreement was signed. In addition, any further protection awarded should be assigned to that agreement on the effective date.

Question 25
We believe that the industry may be better placed to comment on this question

Question 26
Please see previous comments to question 25

Question 27
As mentioned previously any transitional arrangements must not damage the confidence of the consumer particularly if they are likely to affect his decision to enter any credit agreement.

Question 28
We believe that the industry and the FSA may be better placed to respond to this question.

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Financial Regulation Strategy
HM Treasury
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21 March 2011

Dear Sirs

Response by Zopa Limited
Consultation on Reforming the Consumer Credit Regime

Thank you for the opportunity to respond to the Government‟s proposals for reforming the UK‟s consumer credit regime.

In our response, we provide an overview of Zopa itself, explain why we support Option 1 and give our answer to each of the consultation questions.

We would be happy to discuss the issues further at your convenience.

Overview of Zopa

1. Zopa is an award-winning person-to-person (P2P) lending and borrowing platform operated by Zopa Limited at www.zopa.com. Zopa was launched in the UK in March 2005, making it the world‟s first online P2P finance platform.[1] Zopa Limited is based in London, employs 25 people and is backed by investors who include Bessemer Venture Partners, Balderton Capital, Wellington Partners and Tim Draper of Draper Fisher Jurvetson.[2]

2. Since launch, Zopa has facilitated over £125m in loans, with a default rate of only 0.7%.

3. Zopa lenders remain in day-to-day control of the management of their money, including the amount, interest rate, the level of creditworthiness of the borrowers to whom they lend and diversification (the number of borrowers they lend to, and the maximum amount per borrower). The Zopa lending and borrowing process results in direct one-to-one loan contracts between each lender and borrower for every £10 lent. Each lender receives repayments of principal and interest at his chosen interest rate, while loan contracts are administered so that each borrower need only make a single monthly repayment at an APR that reflects the average of all lenders‟ rates. Lenders‟ funds are held in segregated bank accounts at Royal Bank of Scotland

[1] "Person-to-person (P2P) finance platforms" facilitate funding via direct, one-to-one contracts between participants. P2P finance platforms have since grown in number and scale, attracting individual lenders looking for alternatives to savings and investments, as well as consumer borrowers. Examples of other P2P finance platforms in the UK include Ratesetter (www.ratesetter.com), for personal loans; and Funding Circle (www.fundingcircle.com) for SME finance and Buzzbnk (https://www.buzzbnk.org/) for social enterprise.
[2] See http://uk.zopa.com/ZopaWeb/public/about-zopa/meet-the-team.html

pending disbursement to the relevant borrower‟s or lender‟s own bank account, as the case may be.

4. Zopa is not open to lenders who are lending in the course of a business. So the loan contracts are „non-commercial‟ agreements within the meaning of the Consumer Credit Act 1974 (CCA), and lenders are not required to hold a consumer credit licence.

5. Since launch, Zopa Limited itself has held a consumer credit licence (No. 563134), partly as a precaution against the (remote) possibility that a lender who should be licensed misrepresents himself as someone lending non-commercially, and partly because Zopa supported lending by CCA licensees for several years. However, there was neither the volume, nor any particular benefit to licensed lending to make it worthwhile to maintain support for a distinct licensed lending process.

6. At launch, Zopa Limited was also authorised and regulated by the FSA to offer a transparent payment protection insurance policy and, later, to introduce pension business. However, we ceased being authorised by the FSA having withdrawn sales of payment protection insurance after only selling 155 policies; and having decided not to implement the capability to lend pension funds due to the challenge of marketing the option successfully to IFA‟s and pension trustees in competition with traditional investment options.

Why Zopa Supports Option 1:

In addition to the benefits explained in our answers to the questions below, we support option 1 for the following reasons:

1. **Zopa was designed to comply with the Financial Services and Markets Act (FSMA) regime**. When we launched Zopa, we designed our terms of service (the Zopa Principles) and our systems and controls to comply with the FSA‟s requirements for general insurance intermediaries; and to ensure that Zopa does not constitute a collective investment scheme, deposit-taking or other investment activity. We have always strived to be simple, clear and not misleading in the Zopa Principles, web site language, advertisements and communications with our members. We have maintained this structure and approach notwithstanding our withdrawal from FSA authorisation. In addition, we segregate members‟ funds and maintain adequate working capital, partly to ensure an orderly wind-down of the loan book should that become necessary. We consider all these systems and controls as essential to building and maintaining consumer trust, and treating our members fairly.

2. **P2P finance platforms are growing in number and scale**. We estimate that the volume of lending via UK P2P finance platforms will exceed £100m in 2011, virtually twice the estimated 2010 volume of £55m, an increase of 70% on 2009. Such platforms are attracting individual lenders looking for alternatives to savings and investments, as well as consumer borrowers (in the case of Zopa and Ratesetter), SMEs (in the case of Funding Circle) and social enterprises (in the case of Buzzbnk). Regulating P2P finance platforms

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encourages horizontal credit intermediation as a more transparent and stable alternative to vertical credit intermediation (see our answer to Question 14).

3. **<u>There is no rationale for the separation of credit from other financial services.</u>** We – and many consumers – are puzzled as to why enabling the use of credit is not viewed as providing a financial service and regulated as such, particularly as the country"s largest financial institutions are heavily engaged in both. One"s use of money should be viewed by reference to the activity in which one is engaged, rather than through the lens of the product or product provider. While it may be true for the purposes of this consultation that a person borrows money, this activity is not divorced from the management of that person"s overall finances. Indeed, legislators have been at pains to oblige borrowers and lenders to be more responsible in taking into account the borrower"s overall financial position when entering into a loan. It therefore seems contrary to both reality and legislative objectives to maintain the current regulatory distinction.

4. **<u>The CCA regime is unduly prescriptive, yet fails to benefit borrowers.</u>** We have spent considerable time and expense ensuring that Zopa complies with CCA provisions related to both commercial and non-commercial lending. We experienced no growth that could be attributable to either our introduction of commercial lending in 2006, nor our abandonment of it in 2010. There has been no difference in either the performance or default rate as between commercial and non-commercial loans concluded via Zopa. If anything, CCA compliance was merely an additional cost and inconvenience for Zopa and its members, including application for CCA licenses, and borrowers" requirements to acknowledge or sign extra documentation. Instead, the important features for protecting our members are the FSMA-related senior management systems and controls, e-business IT systems requirements, minimum capital requirements, complaints handling and the steps necessary to remain outside the perimeter of collective investment scheme, deposit-taking or other investment activity, including segregation of funds.

Answers to Consultation Questions

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

   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?**

   Yes

3. **The Government would welcome further evidence relating to the consumer credit regime, including in particular:**

   a. **the types of risks faced by consumers in consumer credit markets;**

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(i) Misunderstandings arising from the complexity of paperwork, including multiple agreements for the one overall transaction;

(ii) Misunderstanding, or taking decisions based on, promotional or „teaser‟ rates that rise to standard rates at a later time, e.g. credit card balance transfers;

(iii) Costs arising from failing to understand complex or hidden fees (e.g. early settlement charges, card balance transfers fees, overdraft defaults or overdraft-related „services‟ such as overdraft reserves, interest rates on credit cards held beyond the period in which the initial promotional rate applied).

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

(i) Provisions designed to improve transparency, though the cost of some outweigh the benefit (e.g. highly prescriptive form and content rules);

(ii) Provisions relating to linked and multiple credit agreements and the classification of different types of credit may introduce undue complexity in scenarios involving supplies of multiple goods or services that combine in a single service (e.g. life or general insurance premiums financed by credit).

(iii) The unfairness test (though its effectiveness is undermined by the lack of clarity in its application).

(iv) Controls over debt collection.

(v) Advertising rules (though these are insufficiently flexible to cope with innovation).

(vi) Cancellation rights.

(vii) Inclusion of certain fees and charges in the APR calculation.

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

(i) Dual FSA/OFT licensing in context of general insurance financed by credit or relating to credit agreements;

(ii) Dual FSA/OFT licensing in context of supply of multiple goods or services that combine in a single service (e.g. card terminals in connection with the supply of payment services to SME‟s);

(iii) Anti-money laundering supervision of FSA authorised businesses by (a) the OFT for CCA licensees and (b) HMRC for authorised payment institutions who are pure money remittance businesses.

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

   Yes

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 unified regime would:

   (i) eliminate the artificial distinction between the use of credit and other financial services, giving greater clarity to consumers;

   (ii) improve the ability for consumers to consider their finances as a whole, giving greater clarity to consumers;

   (iii) enhance UK influence of EU regulation of consumer credit and financial services overall by ensuring a single channel for policy and regulatory feedback;

   (iv) increase control over bank activities and how they are funded currently.

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.**

   The CPMA may benefit from localised enforcement through Trading Standards network.

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.**

   Effective regulation of P2P finance platforms would enable a shift in the regulatory burden from lenders and borrowers to the platform operator, regardless of whether the lenders and loans are commercial or non-commercial. In particular, the platform operator acts as the repository of documentation and enables the formation of contracts in a consistent and transparent process. In addition, the operator is a convenient focal point for:

   (i) Senior management systems and controls;

   (ii) Minimum capital requirements (e.g. similar to those applied to payment institutions);

(iii) Segregation of lender funds;

(iv) Orderly administration of loan contracts in the event that the platform ceases to operate for any reason;

(v) E-business IT systems controls; and

(vi) Complaints handling.

8. **The Government would welcome further evidence relating to:**

    a. **the use of consumer credit by small and medium sized enterprises (SMEs);**

        Not applicable to Zopa

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

        Not applicable to Zopa

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

        Not applicable to Zopa

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.**

    (i) Innovation should be easier if it can take place under a single, rules-based regime. However, the CPMA must be responsive to perimeter queries and issue guidance to assist firms in understanding what is permissible, without regard to extensive legal advice (e.g. the FSA‟s “Approach” document in relation to payment services). This will enable new entrants to set up quickly and efficiently, rather than lose momentum in the face of regulatory uncertainty.

    (ii) The simple application process for varying a firm‟s scope of permission under the FSMA regime allows firms to more easily diversify their service offerings, thereby increasing competition and innovation.

    (iii) Bringing credit within the same regulatory framework as credit institutions and financial institutions would also pave the way to EU passporting and a single market for consumer credit.

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

Given the likely number of firms requiring supervision, it would be appropriate for the CPMA to adopt a complaints-led approach, relying on self-reporting and complaints data, and targeted audits where appropriate. There would then be scope for closer supervision based on the scale of particular firms.

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.**

FSMA-style remedies should not be inconsistent with Sale of Goods-related remedies. It is worth retaining the liability of supplier and creditor to consumers under Section 75 of the CCA which is dealt with as between supplier and creditor under contracts for the supply of merchant services by the creditor to the supplier. Such merchant services agreements fall within the scope of the Payment Services Regulations 2009, for which the FSA is the supervisory authority.

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)?**

Yes. It is not at all clear why the use of credit instruments is not viewed as providing a financial service and regulated as such, particularly as the country"s largest financial institutions are heavily engaged in both credit and other financial services.

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?**

Additional advantages include: improved customer experience through consistent treatment of multiple services and reduced paperwork; lower costs for providers that may result in lower prices, better service, new products and/or product improvements.

We are not aware of any disadvantages.

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?**

Yes, the Government should consider the following opportunities in assessing the merits of option 1:

(i) The proportionate regulation of P2P finance platforms, which are growing in number and scale and attracting individual lenders looking for alternatives to savings and investments, as well as consumer borrowers;

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(ii) Improvements in the consumer purchase experience (e.g. scope for reduction or simplification of contractual documentation requirements);

(iii) The requirement to treat customers fairly should yield greater transparency in relation to fees and charges;

(iv) The advantages of a unified regime (see answer to Question 5);

(v) Enhancements to consumer protection (see answer to Question 7);

(vi) The boost to innovation and competition (see answer to Question 9);

(vii) Enhanced prudential supervision (see answer to Question 16);

(viii) Bringing P2P finance platforms within the FSMA regime would broaden the scope for "horizontal credit intermediation"[3] to be used as a more transparent and stable alternative to "vertical credit intermediation"[4]. Specifically:

(a) The one-to-one legal relationship between the borrower and each participating lender (or his assignee) is maintained for the life of the loan via the same loan origination and servicing platform, eliminating uncertainty as to loan ownership and enforcement entitlements;

(b) The intermediary has no balance sheet risk, and therefore no temptation to engage in regulatory, tax or other arbitrage;

(c) The interest rate and maturity of each loan do not need to be altered to enable the lender or his assignee to achieve diversification across different loans, loan terms and borrowers;

(d) The basis of the original underwriting decision remains transparent and available as the basis for assessing the performance of the loan against its grade, as well as for pricing the loan on assignment, making due diligence easy;

(e) To the extent that credit risk were to concentrate on certain borrowers or types of borrowers, those risks would remain visible throughout the life of the loan, rather than rendered opaque through fragmentation, re-packaging and re-grading; and

(f) The scope for moral hazard is also contained by the combination of these features.

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[3] A credit intermediation process in which loans are made in separately assignable units at inception.

[4] A credit intermediation in which assets are split and re-packaged for the purposes of altering maturity, coupon and risk (e.g. asset-backed securities, collateralised debt obligations and credit default swaps): "Shadow Banking", NY Federal Reserve Board, July 2010 (http://www.ny.frb.org/research/staff_reports/sr458.pdf)

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?

N/A

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.

Proportionate application of each type of requirement outlined in paragraph 3.6 would be appropriate for all types of consumer credit businesses. Such requirements might include: at least one Approved Person; senior management systems and controls; the obligation to identify and manage operational risk; minimum capital requirement to cover adequate customer service, complaints and IT requirements;[5] segregation of funds (where applicable); obligations to treat customers fairly; complaints handling; orderly administration of loan books on cessation of business; regular reporting; and complaints-led supervision.

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?

Yes.

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

(i) Number of current consumer credit borrowers (this is a more proportionate measure of size for P2P finance platforms, which enable lenders to diversify by making many small loans to different borrowers; and also reflects the scope of supervisory work involved in the protection of borrowers, and lenders" risk);

(ii) Income from consumer credit business (again, pertinent to P2P finance platforms, which do not assume balance sheet risk);

(iii) Fees should not be so expensive as to discourage participation in the regime and encourage loan sharks.

19. The Government welcomes:

[5] For example, 10% of the authorised payment institution's fixed overheads for the preceding financial year (i.e. method A from the Payment Services Regulations http://www.legislation.gov.uk/uksi/2009/209/schedule/3/made)

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a. **evidence relating to experiences of the current appointed representatives regime;**

N/A

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; and**

N/A

c. **evidence relating to the implications an appointed representatives regime might have for firms and consumers.**

N/A

20. The Government welcomes:

a. **evidence relating to experiences of the current group licensing regime; and**

When Zopa permitted CCA licensees to lend, it seemed there was an opportunity to use the group licensing approach to cover Zopa lenders" involvement on the platform. However, the OFT believed the group licensing regime was too narrow to cover this scenario.

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

We see no reason to distinguish professional bodies from other types of membership-based organisations, so long as they all meet the same prudential obligations referred to in answer to Question 16 above.

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 Zopa Principles are a self-regulatory code, as they comprise an agreement amongst Zopa, lenders and borrowers as to how Zopa"s works in practice. In particular, we designed the Zopa Principles to ensure clarity and transparency that Zopa does not constitute a collective investment scheme, deposit-taking or other investment activity.

The Zopa Principles cover (i) eligibility to be a lender or borrower; (ii) registration and membership set-up; (iii) how the borrowing and lending processes work; (iv) segregation of funds; (v) how loan contracts are concluded; (vi) how loans are serviced; (vii) processes for the recovery of missed payments; (viii) the fees and charges that apply; (ix) variation (x) termination; (xi) use of personal data; (xii) liability for user content posted on the platform; (xiii) limits on liability; and (xiv) complaints handling.

We are also in the process of agreeing a P2P finance industry code with other P2P finance platform operators to cover the same sorts of rights and obligations that are addressed in the Zopa Principles. We are happy to share the final industry code as soon as it is finalised.

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.

Given Zopa"s regulatory position to date, we believe there is still a case for Zopa to remain subject to self-regulation (or co-regulation, to the extent that the CCA applies in certain limited respects). This would of course minimise the cost to both Zopa and the CPMA. However, we have been advocating the creation of a proportionate regulatory framework for P2P finance platforms for several years, to preserve the reputation of the nascent P2P finance market segment by ensuring that operators design their platforms to address the underlying operational risks. We are concerned that new entrants may not understand how Zopa"s systems and controls have been effective in preventing consumer detriment and managing our operational risks. If that is the case, such operators may assume such systems and/or controls are unnecessary, and leave themselves and their members unnecessarily exposed to losses or other detriment.

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 believe that the benefits of such a new regime are adequately explained in our answers to other questions.

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

The transition arrangements under the Consumer Credit (EU Directive Regulations) 2010 (and related CCA regulations) provide a reasonable precedent for the transition to FSMA regulation of consumer credit agreements.

25. The Government welcomes views on:

a. how existing licensees could be dealt with; and

Given the substantial difference between the CCA and FSMA regimes – and the potential for new business to be included (such as P2P finance platforms), it would not seem possible to „grandfather" existing licensees automatically into the FSMA-style regime.

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Instead, every existing business that offers consumer credit that is within the scope of the new framework, whether or not that business is an existing CCA licensee, should be given a year to apply for CPMA authorisation; but not be able to carry out a controlled activity if it"s application is ultimately rejected once the new regime takes effect.

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

N/A

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

N/A

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

It will be important that consumers be made aware of the transition timetable and its implications, so as to avoid uncertainty during the transition period.

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.**

N/A

Yours faithfully

Giles Andrews
Chief Executive Officer

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