Damartex

Bowling Green Mills, Bingley, West Yorkshire BD97 1AD
Telephone: 01274 568211

CONSUMER PROTECTION & MARKETS AUTHORITY
[Financial Conduct Authority]

From: Damartex UK Limited

RESPONSE to

A new approach to financial regulation:

consultation on reforming the consumer credit regime

21 March 2011

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

Damartex UK 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 SME's. 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 does not fall into the usual definition of a "small to medium sized enterprise" [SME] as we have a turnover in excess of £100 million and employ approx. 800 staff. Our primary business is that of a mail order retailer, of ladies clothing in the senior market. The provision of running account credit is in terms of size a small proportion of our business but is a critical component in the overall offering to the customer.

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

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

The standards expected by firms in the framework of the UK regulatory regime for consumer credit are some of the highest in Europe and the burden on SME's in ensuring compliance is a large one. Banks, building societies and large finance houses have larger staffing levels and financial resources to cope with more onerous regulation for deposit takers where the risks are greater. For the SME's 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 the number of loan agreements written. Companies are concerned about their reputation, and treat consumers with respect and dignity. The risk lies with the lender not the consumer, as no deposits are taken by the lenders outside of the banks, large finance houses and building societies. We believe that there is no compelling reason to move towards monitoring and reporting as consumers are already well protected.

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

Andrew R Hill
Managing Director

DEMSA
DEBT MANAGERS STANDARDS ASSOCIATION

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

22nd March 2011

DEMSA's response to the Treasury's consultation on reforming the consumer credit regime

About DEMSA

- The Debt Managers Standards Association (DEMSA) is the leading trade association for the paid for debt advice and solutions services sector. DEMSA objective is to encourage and promote the highest standards of debt advice and services and to provide greater consumer protection and redress.

- DEMSA has almost 20 members that collectively account for circa 70% of all paid for debt management plans and Individual Voluntary Arrangements in operation in the UK

- DEMSA is the only trade association within the debt sector to have received Code accreditation, under the Office of Fair Trading's Consumer Codes Approval Scheme.

- http://www.demsa.co.uk

DEBT MANAGERS STANDARDS ASSOCIATION LIMITED
West Point, Westland Square, Leeds, LS11 5SS
Tel: (0113) 277 7610 Fax: (0113) 277 3586

e-mail: **info@demsa.co.uk** **website: www.demsa.co.uk**
a company limited by guarantee. Reg No. 4031983
VAT Reg No 987 5965 32

Response to consultation

We broadly agree with your assessment of the consumer credit market.

DEMSA's member firms vary but most have multiple regulatory relationships across their service offerings:

- OFT for debt advice/solution services and consumer credit
- FSA for insurance, banking services, mortgage and secured loan broking
- INSS, IPA, ICAS & AiB for insolvency service
- Secretary of State for Competent Authority status for Debt Relief Orders

The multiplicity of regulators and Codes is, in DEMSA's view, not just adding costs and complexities; but makes it harder for consumers to understand and navigate consumer credit and debt related issues and to seek appropriate redress when things go wrong.

An example where the current regulatory regime does not work well is in relation to claims management and debt management services; where a provider could be licensed to provide both services and even act in both capacities on the same account and yet if the consumer needed to seek redress, depending on the nature of the failing; either the OFT or MoJ could be the appropriate licensing body. This licensing structure therefore causes unnecessary confusion for the consumer and can typically bring an inconsistent approach to complaints handling and redress.

From a consumer point of view, markets need to work well for them and when they do not, simple redress needs to be available, which could clearly be better delivered through a single regulatory body. This approach could quickly identify a firm with whom risk is associated and allow adequate investigation or action to be taken; that might otherwise be more difficult to detect through the existing fragmented regulatory approach. As a result we believe that there is a strong case for a single regulator and a consistent approach to regulation across retail financial services.

The consumer credit market is fast paced with firms such as payday loan companies, claims management firms and gold purchasing companies expanding rapidly and in recent times it has been apparent that insufficient consumer protection has been in place to prevent a detrimental impact and to ensure markets remain fair, transparent and competitive.

In terms of debt advice and solution services, the market has also expanded at a quick pace and a number of licences have been issued to individuals with insufficient knowledge and experience. A single regulatory approach; whilst not necessarily completely preventing consumer harm; would bring greater experience and the ability to collectively approach evolving markets in a more risk based manner.

DEMSA is not convinced that the existing profusion of regulation works in the best interests of consumers. For example a consumer may approach an FSA regulated firm to discuss a mortgage or secured loan, who in-turn might refer them to another business (potentially within the same Group) where they may be sold an OFT CCA regulated unsecured credit product. If the customer subsequently falls into arrears and then enlists a debt management firm for advice – depending on the nature of failings the customer might have to seek redress from the FSA, OFT or, for example INSS. Whilst this brings obvious difficulties for the consumer; it clearly brings challenges for the regulators who might have authorisation to investigate an aspect of the complaint, but not the complaint in its entirety.

DEMSA therefore supports the objectives of the proposed reform. We believe that a unified regime has the potential to deliver improved outcomes both for consumers and firms and to ensure a more consistent approach; keeping pace with market changes.

However DEMSA has concern that if the current licensing regime results in licence holders simply being grandfathered into this new regulatory regime; it seems likely that a number of problems will remain and an opportunity for a clean up of the industry might be missed.

This is highlighted through the recent findings from the OFT's review of compliance with Debt Management Guidance; which found widespread evidence of poor practice liable to cause significant consumer detriment. It would therefore seems appropriate that some form of audit was required for firms to demonstrate their fitness to retain their licence under this new regulatory body - rather than automatically qualifying because they hold an existing licence. DEMSA would therefore not support "grandfathering" of existing licenses into the new regime.

DEMSA's members would also welcome increased flexibility - the consumer credit and debt markets evolve quickly; which allows a competitive and dynamic industry but also brings increased risk and potential consumer detriment and any future regulatory regime should consider how this can be best managed to meet the needs of all parties.

It would also seem appropriate to ensure this new regulator was made up of representatives from all sectors within the industry; as much work has already taken place to identify risk as well as good practice and this knowledge should be pooled and utilised for the benefit of future regulation and monitoring.

DEMSA would welcome the opportunity of being included within any future stakeholder group; sharing market intelligence and contributing further to the development of a single regulator.

MICHAEL LAND
CHAIRMAN
Debt Managers Standards Association
michael.land@demsa.co.uk
0113 277 7610

A new approach to financial regulation: consultation on reforming the consumer credit regime – response from Debt Resolution Forum

THE DEBT RESOLUTION FORUM
Promoting Professional Standards

Below, please find the response to the Treasury/BIS consultation "A new approach to financial regulation: consultation on reforming the consumer credit regime" from the Debt Resolution Forum (DRF).

DRF is a trade body representing fee-charging consumer debt resolution companies and organisations and individuals who provide services to debt resolution companies.

DRF is raising standards and working to eliminate consumer detriment in fee-charging debt resolution by:

- Requiring standards of employee training for members and creating a qualification (the Certificate in Debt resolution or CertDR) for members' staff: this is an advanced BTEC requiring 210 hours study over three modules – each of which is examined. The qualification is accredited by EdExcel.
- Providing an independent complaints procedure for consumers
- Providing independent monitoring through annual on-site visits to all members by the Insolvency Practitioners Association (IPA), one of the professional bodies responsible for the regulation of licensed insolvency practitioners.
- DRF is currently applying for Approval of it's standards under the OFT's consumer codes approval scheme.

DRF's response to this consultation has, necessarily, been in outline only – as, though the paper makes it clear the new scheme of regulation would apply to debt resolution, it does not go further. Our view is that the Debt Resolution industry strongly desires the public trust that effective regulation will bring and we are working hard to achieve that, currently, with OFT and will continue the process with any successor bodies. However, we hope the needs of over-indebted consumers will be looked at in more depth and detail in the forthcoming Treasury/BIS consultation on credit and debt regulation.

David Mond
Chairman, Debt Resolution Forum

22 March 2011

Page	Box No.		DRF RESPONSES
13	1.B	1. Do you agree with this assessment of the consumer credit market?	DRF broadly agrees. But we think that the need for an appropriate framework for debt collection and debt resolution may have been given insufficient representation in this document and hope this will be redressed by the forthcoming consumer credit and personal insolvency review. We would like to point out that the Debt Resolution Forum (DRF) has a set of standards that is currently under consideration by the OFT consumer codes team and that this is backed by independent on-site, annual audit by the Insolvency Practitioners Association – a body trusted by government to regulate licensed Insolvency Practitioners. We would hope to show that self-regulation can provide a body of effectively regulated debt resolution companies that minimise the need for the cost of effective debt advice to fall on the public purse.
		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?	From the perspective of helping consumer debtors, we think so. We believe unsustainable debt is incurred in times of growth and merely exacerbated when the economy staggers. A more organic, coherent approach could help ensure both sides of the coin (lending and debt resolution) were given appropriate oversight.
		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; b. key provisions for consumer protection under the current regime and their effectiveness in securing appropriate outcomes for consumers; and	

		c. the incidence of regulatory duplications or burdens on firms and/or inconsistent regulation of similar types of business.	
14	1.C	4. Do you consider these objectives for reform of the consumer credit regime to be appropriate and attainable?	Yes, but we believe that – for fee-charging debt management companies – effective, robust and supportive self-regulation by a trusted trade association can
17	2.A	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.	DRF believes the proposed reforms provide an opportunity for improved clarity, coherence and market oversight, But, we'd like to point out that debt and credit are two sides of the same coin but are rarely considered as such – an opportunity to consider the regulation of sale of credit, debt collection by creditors and debt resolution by third parties as a single piece could result in remarkably improved rehabilitation of struggling debtors. However, for this to be effective, pre-conceptions concerning the effectiveness and behaviour of both creditor-funded and taxpayer-funded debt resolution organisations, against fee-charging companies, need to be overcome.
17	2.B	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.	DRF is of the view that struggling debtors (and their creditors) both benefit from the provision of debt resolution schemes that deal with all of a person's unsecured debts (or, indeed, all debts) and that many debtors can afford to contribute to the cost of these schemes (as, perhaps, should their creditors). A significant proportion of the fee-charging debt management industry is determined to show that they are well-managed and operated, provide benefit and value to consumer and creditor alike and cause no consumer detriment. We believe the historic perception of the industry no longer widely pertains and that many safeguards are in place and will prove to be effective in the short term. DRF does not believe it is necessary for taxpayers to fund debt resolution for those who can afford it and that government funded debt advice agencies, like Citizens' Advice, should concentrate on providing advice to the many who cannot afford to

			pay. As such we would be concerned if oversight or regulation of our industry, or codes of conduct pertaining to it (such as the current OFT Consumer Codes Approval Scheme) were to be transferred to a body which is essentially a competitor for services in our market place – Citizen's Advice.
18	2.C	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.	At present, most creditors' debt collection strategies rely on being the most persuasive, most robust or most frequent voice on the debtor's telephone. This frequently results in debtors "robbing Peter to pay Paul" and making payments to one group of creditors during one salary period and others the next. This frequently causes great stress and often does not result in significant reduction of debt. Few debtors with repayment problems are only in default to a single creditor. DRF believes mechanisms that might encourage creditors to recommend co-operative solutions to their debtors, whereby a sustainable repayment plan is put in place, should be encouraged.
19	2.D	8. The Government would welcome further evidence relating to: a. the use of consumer credit by small and medium sized enterprises (SMEs); b. whether the protections currently afforded by the CCA are appropriate and cover the right groups of businesses; and c. the costs and benefits of considering extending FSMA-style conduct of business rules to a wider group of SMEs.	Insolvency regimes affecting businesses and individuals are entirely different and DRF would not comment on business insolvency. However, we do believe that the use of consumer credit by self-employed people is highly relevant to the regulation of consumer credit. Many self-employed people, especially tradesmen and start-ups, use their existing credit cards to finance aspects of their business. It is also common for self-employed people, who are experiencing financial difficulties, to use credit cards (and even to obtain loans) that were originally obtained to manage their personal lives and to use the sums available to keep a struggling business going. Measures designed to signpost these people to early advice could help to reduce the failure of self-employed enterprises as well as the personal financial consequences of such failures.

20	2.E	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.	DRF agrees that a rules-based regime could be more flexible and could act more quickly to prevent consumer detriment, especially in areas such as debt resolution, where rogue enterprises sometimes come to market with new and different products of varying practicality. However, we would be concerned that the consultative panels were sufficiently broadly based to ensure ill-informed bias against the sector as a whole acted to prevent well run and effective debt resolution companies from providing solutions that deliver value for debtors and creditors.
20	2.F	10. The Government welcomes views on the impact an FSMA-style supervisory approach may have in terms of ensuring effective and appropriate consumer protection.	DRF believes the graduated, risk-based approach advocated in the consultation document could be of great benefit to consumer protection in the debt resolution sector, where some companies and their practices may pose a significant risk of detriment whilst others strive to minimise risk. Acknowledgement that a zero-failure regime is neither appropriate nor desirable is helpful in a marketplace where there is potential for error in even the best run cases (due, for example, to inaccurate information from a consumer). DRF operates an independent consumer complaints resolution scheme which is also designed to bring problems and issues to the attention of members as a whole and to encourage higher standards.
21	2.G	11. The Government welcomes views on the synergies afforded by the current regime in tackling problems associated with the sale of goods and services on credit, and how these might best be retained in the design of a new regime.	No comment.
23	2.H	12. Do you agree that transferring consumer credit regulation to an FSMA-style regime to sit alongside other retail financial services regulation under the CPMA would support the Government's	Yes, the ability to make or amend rules without the need for primary legislation would be of considerable benefit to the regulation of debt resolution products and enterprises – but DRF would be concerned that the process should be sufficiently

		objectives (as outlined in paragraph 1.18 of Chapter 1)?	informed not to be biased towards the views of consumer groups or creditors.
		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?	No opinion..
		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?	In relation to debt resolution, DRF believes that rules for extending credit need to be considered together with rules for resolving debt – and not separately, as one is the consequence of the other.
		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?	Our concern is that the regulatory authority should have the appropriate knowledge, skills and resources and should not suffer from institutional bias against fee-charging debt resolution providers.
26	3.A	16. The Government welcomes views on the suitability of the provisions of an FSMA-style regime, such as those referred to in paragraph 3.6, to different categories of consumer credit business.	See our comments above.
30	3.C	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 an FSMA-style regime?	DRF is concerned about the fee-raising mechanism. One product of the debt resolution industry – the Individual Voluntary Arrangement (IVA) is already closely regulated by professional bodies working under a statutory framework. DRF has put in place a monitoring and accreditation process including annual on-site review by a trusted body (the Insolvency Practitioners Association) to cover the most significant

			other product, the debt management plan. The Industry's efforts to ensure the elimination of consumer detriment means compliance is becoming a significant cost to member companies. It seems likely that, initially at least, a number of debt resolution companies would be seen as high risk businesses, suffering high costs of regulation. At the same time, creditors do their utmost to drive down the costs of debt resolution schemes. There is a real danger that some debtors, who could otherwise afford debt advice, might not be able to be offered an IVA or debt management plan if compliance costs were raised sharply without this increase being matched by creditors' willingness to see an increase in fees.
		18. The Government welcomes views on key factors that would need to be assessed in considering fee arrangements for consumer credit firms.	See 17 above.
31	3.D	19. The Government welcomes: a. evidence relating to experiences of the current appointed representatives regime; b. views on how an appointed representives 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 c. evidence relating to the implications an appointed representatives regime might have for firms and consumers.	No experience.

32	3.E	20. The Government welcomes: a. evidence relating to experiences of the current group licensing regime; and b. views on how the professional bodies regime might be adapted for different categories of consumer credit activities.	No Experience of group licensing. In relation to professional bodies DRF believes the regulation of licensed insolvency practitioners by professional bodies is an excellent example of effective regulation and this should continue and be enhanced. This will have an impact on the regulation of other debt resolution products which are provided by firms who are either firms of professionals with licensed IPs or firms with licensed IPs as directors.
32	3.F	21. The Government welcomes views on the extent to which self-regulatory codes might continue to deal with aspects of lending to consumers and small and medium enterprises (SMEs).	This question mentions "lending" only – in a document that makes it clear it wants to deal with the area of debt resolution too. This highlights DRF's concern that the experience and expertise (and even awareness) that, for example, currently exists within the Office of Fair Trading is not yet present to effectively regulate debt resolution under an FSMA style regime. However, DRF believes that a system of self regulation, based on independent audit and evolved from the professional schemes of regulation used by licensed insolvency practitioners, has been developed for our members and that this can provide the framework for effective future self-regulation, to whatever standards are required.
34	3.G	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 opinion.
34	3.H	23. Are there other ways in which the design of a new consumer credit regime based on a FSMA-style framework might ensure a proportionate and effective approach?	No opinion.

37	4.A	24. The Government welcomes views on how the treatment of agreements already in existence could be approached.	No opinion.
38	4.B	25. The Government welcomes views on: a. how existing licensees could be dealt with; and b. factors that should be considered in determining whether a modified approach could be adopted for particular categories of licensed firms.	DRF's view is that the OFT's review of firms in the debt resolution sector, and the process of audit that has been required means that any firm that has succeeded in maintaining it's licence, following this review process, should be grandfathered into the new scheme.
38	4.C	26. The Government welcomes views on key factors that would need to be considered in transitioning from the current to a new fee structure.	As noted above, the costs of compliance could be sufficiently high to, if creditor pressure on fees is maintained, deny access to debt resolution for many. Consideration to the level of charges should be accompanied by consideration of whether it might be possible to ascribe costs on a case by case bases, ensuring the cost of regulation is, in whole or in part, proportional to the size of the firm.
39	4.D	27. Are there other factors the Government should take account of in considering transitional arrangements?	No opinion.
		28. The Government would welcome evidence on the experience of firms, consumers and their representatives in relation to similar previous transitions, for example the extension of FSA jurisdiction to new markets since 2000.	No experience.

Devon County Council Trading Standards Service
[personal details removed]

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:
- 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.

Rogue Traders. Civil Law is only productive way for consumers to enforce individual cases. Trader may be out of business. Consumers may lack evidence. Average consumer is easily confused by the credit regulations and methods of enforcement.
Advice and enforcement often come from separate bodies, for example, the OFT will issue consumer credit licences and publish a leaflet on whether you need one or not but will not answer individual queries from businesses as to whether they need one. The financial ombudsman is a good service however only in terms of redress not enforcement.

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.

We would agree that a single regulator would improve clarity and coherence but there are benefits in credit enforcement being dealt with at a local level by local authorities (LAs). The officers concerned have a good knowledge of local businesses, are often contacted for advice by those businesses and already have a profile on the high street and business community due to their other regulatory functions - Trading Standards officers are in contact with businesses and consumers on a very wide range of transactional issues. If there is consideration of a local Authority enforcement role ending or transforming into a "notified body" regime, then we think either the LA enforcement role should be retained or there should be a positive obligation on the new markets authority to seek notified bodies among local authorities or CAB. Otherwise while a new regime might deal with some aspects of credit provision effectively, it may not deal with all consumer facing practices. We believe there is much to be gained by keeping credit enforcement with a specialist consumer law regulator at a local level.

A recent large case this authority took to court against a problem company under the CPRs is a case in point, where alleged misrepresentations by brokerage companies (in our opinion) effect the civil rights of consumers. Any non LA enforcer in this situation would be unaware of these practices which were only uncovered as a result of the larger investigation on mostly non-credit related matters.

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.

(See also answer to 5) Whichever organisation gets the role of regulating and enforcing credit needs to have the skills and resources to carry out investigations. They also need to be responsive to the consumer credit market and to individual consumers. We believe the public would like a regulator that can deal with individual complaints and businesses would want a local contact for reliable advice and information.

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.

We feel that consumer protection is best retained and enhanced by ensuring local authority enforcers (i.e. Trading Standards Services) are sufficiently resourced, retain the enforcement function and exercise it at a local level. This brings synergy as TS enforcers already deal with a wide range of consumer and business transactional processes, are a trusted and well known presence in local communities and business communities and can more easily deal with credit in the context of the larger marketplace in goods and services.

Section 75 is an incredibly useful tool for the consumer especially in circumstances where traders go into liquidation or where rogue traders take the money and run. This protection should be retained in any new consumer credit regime.

We believe the consumer should have the right to a cooling off period on credit agreements. This is necessary due to high pressure tactics used by sales people and also due to the fact that many consumers sign agreements without taking the time to fully read them. By giving 7 days cooling off period we allow the consumer to give adequate consideration to signing up for agreements for large sums. For simplicity we think it would be sensible for this cooling off period to apply where-ever the credit agreement is signed as opposed to the current complicated system where it can vary.
c. We believe consumer credit agreements should be as simple and as easy to read as possible. Most consumers are not credit experts. All credit agreements should prominently feature the amount of credit, the interest rate and the total amount of to be paid at the end of the agreement. It should also contain what the credit is for, broken down. Most credit agreements do contain this information but it is drowned out by the mass of small print which the consumer doesn't want to read. A simple version with just this information should be provided to consumers and require their signature.

We believe that all credit providers should have to fully consider a persons creditworthiness before providing them with credit.

We believe a positive licensing system should be retained

We believe their should be simpler and speedier mechanisms to suspend or remove transgressing individuals and businesses from the credit market and control practices not in consumers interests.

We believe a free market in credit interest rates does not offer adequate protection, particularly for consumers on low incomes or with poor credit ratings. The issue of extortionate credit needs to be reviewed and we would suggest a statutory code of practice could be introduced to set enforceable guidelines/limits for interest rates applicable to particular groups, based on risk e.g. The advertising of loans on TV for relatively small amounts at interest rates of 1000's %, preys on those with low income and the vulnerable, who don't have ready access currently to cheaper credit, and discredits any credit regulation regime and the lending sector generally.

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 believe that all credit agreements should be regulated in exactly the same manner to achieve the same level of protection for the consumer.

9. The Government welcomes views on how consumer credit firms and consumers may be affected by the increased flexibility that could be provided by a rules-based regime.

We believe that there have to be clear basic rules that all credit providers have to abide by and there needs to be a body who have the power to enforce when these rules are not met, however there is no requirement for the regulation to be as complicated as it currently is. But simplification should not be at the expense of reduced protection for consumers or competitor businesses

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 believe that the success or failure of any regulatory body comes down to its attitude to actions which cause consumer detriment. An organisation which is tough with rogue traders and those who breach regulations will help ensure consumer confidence in the credit market. It must be prepared to act much more quickly than under the current regime to deal with transgressors and practices not in the public interest and suspend and if necessary remove offending businesses and individuals ability to offer credit, engage in the credit market.

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.

Good communication and intelligence. The databases kept by trading standards and by consumer direct contain a huge volume of information about consumer complaints. This information would inform the regulator as to problem areas and problem traders. A regulatory authority has to react quickly when new issues arise.

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 provided that it regularly communicates with and is responsive to trading standards or else directly receives complaints from the general public.

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 will all come down to how pro-active the regulator is. Will they have resources to take on multiple cases against both small and large companies? Will they have the culture and enforcement skills necessary to intervene to protect consumers and ensure a level playing field for businesses.

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

See answer to question 7. We believe this would require new legislation.

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.

No views.

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 with the idea of a proportionate based approach however the question comes down to what is considered proportionate. We believe that consumer complaints should play a central role in determining where enforcement is carried out. Bear in mind that each individual consumer is likely to only be concerned about their case and if action is not taken on their case they will consider the regime to be a failure – especially if a clear beach of consumer law has taken place. See Q18 for our views on fees.

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

We agree with the proposals presented, however, fees should be flexible and if there appears to be an issue arising in a particular area then the fees may need amending.

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.

We would agree that the creditor who ultimately benefits from the credit should be responsible for the activities of their representatives and ensuring that they have complied with credit regulations, however, as credit brokers are a common source of complaints and they work for many different clients we would believe that they also should still be regulated.

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 had no complaints relating to the current group licensing regime. We therefore have no comment on this issue.

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 codes can be useful depending on what they say. Most useful ones are those that are reactive to individual complaints and membership of such a self regulatory scheme is compulsory. See 7 g. above re extortionate credit and codes of practice.

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 we don't believe that there are certain areas for deregulation, however, we would agree that the regulations in question should be kept as clear and simple as possible to minimise the burden on traders and provide clarity and certainty 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?

We believe that the regulations should be intelligence led and concentrate on areas with a high volume of consumer complaints. The regulator should be able to promptly act to protect the consumer from detrimental trading activity in whatever form it may take. We also believe regulators should consider other social factors when determining enforcement priorities, including protecting vulnerable groups, dealing with aggressive selling practices, protecting those groups who are economically disadvantaged, with little bargaining power, who end up paying the highest interest rates in the current market[place (eg TV advertising 1000%'s percent APR on small loans, where agreements an be finalised quickly – these must be directed at those in most pressing need, who can probably least afford to repay at those rates, but have little other option)

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

When people entered into their credit agreements under the old regime they did so under the belief that they would have the protections of that regime. This is true for both consumers and traders. Therefore we cannot see how it will be possible to not regulate these agreements in the manner in which they were originally agreed. Would you force all parties to change their agreements? What if one of them did not wish to do 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.

If there are significant changes to the requirements needed to obtain a credit licence then all existing licence holders would have to abide by this however if there are no significant changes then ground fathering would be possible providing this is financially possible.

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

No view

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

No view

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 can offer no evidence on this.

Direct Marketing Association
DMA House
70 Margaret Street
London W1W 8SS

T 020 7291 3300
F 020 7323 4165

E dma@dma.org.uk
W www.dma.org.uk

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

22 March 2011

Dear Sir/Madam

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

Introduction

The Direct Marketing Association (UK) Limited (DMA) is Europe's largest trade association in the marketing and communications sector, with approximately 800 corporate members and positioned in the top 5% of UK trade associations by income. The total value of direct marketing to the UK economy is estimated to be £72.5 billion. This comprises three separate figures; £43.3 billion on expenditure on direct marketing media and activities, £16.7 billion on employment and £12.5 billion on overheads resulting from employment (The Value of Direct Marketing 2010 published by the DMA). The DMA represents both advertisers, who market their products using direct marketing techniques, and specialist suppliers of direct marketing services to those advertisers - for example, advertising agencies, outsourced contact centres etc. The DMA also administers the Mailing Preference Service, the Telephone Preference Service and the Fax Preference Service. On behalf of its membership, the DMA promotes best practice, through its Direct Marketing Code of Practice, in order to maintain and enhance consumers' trust and confidence in the direct marketing industry. The Direct Marketing Commission is an independent body that monitors industry compliance. Please visit our website www.dma.org.uk for further information about us.

The DMA welcomes the opportunity to respond to this consultation by HM Treasury on financial regulation.

General Comments

1) Business certainty

The DMA is concerned that any major changes to the consumer credit regulatory framework, such as moving to a principle based approach under the Financial Services and Markets Act, would cause uncertainty for businesses. Businesses are familiar with working under the existing consumer credit regime based primarily on the Consumer Credit Act 1974. Indeed, the regime has recently been updated through the Consumer Credit Act 2006 and changes made to the regulations as a result of the implementation of the Consumer Credit Directive into UK law. It would therefore encourage the existing statutory based regime under the Consumer Credit Act 1974 to remain even if the Financial Conduct Authority (FCA) replaces the OFT as the regulatory body. It would also recommend that the existing consumer credit team at the OFT moves across to the FCA in order to ensure that the knowledge base is preserved.

2) Impact assessment.

The DMA notes that that although the consultation paper refers to the benefits for consumers of transferring regulation to the FCA, these are not specified. The paper also does not quantify the increased costs for businesses. Businesses involved in the consumer credit market have recently had to spend money to ensure compliance with the Consumer Credit Directive and the Consumer Credit Act 2006, including the regulations made under the 2006 Act. The costs of a further change to the regulatory regime must be justified in terms of the benefits to consumers.

3) Self- regulatory regime.

The DMA is a member of the Committee of Advertising Practice and fully supports the self- regulatory regime of the Advertising Standards Authority (ASA). The ASA works closely with both the FSA and the OFT, depending on who has regulatory responsibilities for the product in question in the advertisement complained about. The DMA is concerned that the benefits of the self- regulatory system may be lost in any transfer of responsibility for consumer credit to the FCA.

Please contact the writer of this letter if you have any further queries. The DMA is supportive of the responses submitted by the Advertising Association and the CBI. The DMA looks forward to working with HM Treasury as the project develops.

Yours sincerely

James Milligan
Solicitor, Legal and Public Affairs Adviser
The Direct Marketing Association (UK) Limited

CONSUMER PROTECTION & MARKETS AUTHORITY
[Financial Conduct Authority]

From: **Droitwich Finance Limited**

RESPONSE to

A new approach to financial regulation:

consultation on reforming the consumer credit regime

respond to:

financial.reform@hmtreasury.gsi.gov.uk

or

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

16 March 2011

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

Droitwich 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
Underwriting Used Car loans on older vehicles.
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

Mr M Matthews
Director

East of England Trading Standards Association

RESPONSE

Comments on transferring the regulation of consumer credit from the Office of Fair Trading [and trading standards] to the new Consumer Protection and Markets Authority	
Emma Head – EETSA Regional Co-ordinator	Emma.head@tradstan.suffolkcc.gov.uk
Response to LGR/HM Treasury	financial.reform@hmtreasury.gsi.gov.uk miranda.packer@local.gov.uk
8 March 2011	Page

This response represents a consensus view of the East of England Trading Standards Association (EETSA) members to the consultation paper on transferring the regulation of consumer credit from the Office of Fair Trading [and trading standards] to the new Consumer Protection and Markets Authority. It does not necessarily reflect the opinions of the employing authorities.

Introduction.

The proposal in this document is to transfer responsibility for Consumer Credit matters from the Office of Fair Trading (OFT) to the new Consumer Protection and Markets Authority (CPMA). The suggested CPMA regime appears to operate in a similar way to the current Financial Services Authority (FSA) regime.

The consultation objectives for the new CPMA are that it will:

- Be strong and independent.
- Provide similar levels of Consumer Protection.
- Result in unnecessary duplication in regulation.
- Provide an opportunity to for simplification and deregulation.

Before going on to the specific questions asked in the consultation there are some points which are worthy of mention.

It is acknowledged that, for some time, there has been real concern at the effectiveness of the current regulatory regime in tackling consumer debt and associated detriment. This includes an apparent lack of robustness in the area of Consumer Credit Licensing, and, arguably, a failure to properly respond to the developing market/growing consumer detriment at a national level. There is therefore, on the face of it, clear merit in looking again at the way that consumer credit is regulated in this Country.

However this does not necessarily mean that wholesale changes are required. There are those who have already questioned the effectiveness of the FSA's overall role in regulating financial institutions over recent years; and so any proposal that includes a shift of emphasis to regulation by a similar body may cause some alarm. At a time when localism is being widely promoted the removal of part of such an important Local Authority function to that of a central government body may be seen as out of step and at odds with the need for local aspect in terms of control and intelligence about Consumer Credit issues.

Existing Legislation

Of course the current Consumer Credit regime is not without its faults, but the Consumer Credit Act 1974 (CCA) has stood the test of time, with changes in 2006 providing some refinement. The changes proposed here are to bring in the provisions of the Consumer Credit Directive, some of which could be argued as imposing greater burdens on business, whilst causing some loss in consumer protection provisions.

The main function of the Act was to protect consumers when entering into credit. Its rights, protections and remedies have ensured that this protection has to a greater extent worked as intended. The legislation was perhaps ahead of its time and actually provided limited criminal sanctions, as this was not its main remit. It provides what in essence is a set of rules which creditors must follow; to a large extent such rules are followed due to the overriding concern of any creditor that if they do not they may well not be able to enforce the agreement and lose their money. The advantage over the current FSA system is the consumer often does not have to resort to any action themselves and it was for the creditor to consider their position. In more recent times the Financial Ombudsman has been a source of assistance but as their rules/procedures do not necessarily mirror some legal provisions, some gaps have emerged in protecting consumers, along with some debate about the consistency of decisions on the same/similar facts.

The CCA has provided protection for the most vulnerable in society. The consultation proposals refer to the need for consumers to take responsibility for their actions. Whilst this view would be supported to some extent it must me recognised that there are those who will make mistakes, ill-informed judgments or are deliberately taken advantage of in seeking credit and it is often the most vulnerable members of society who are most in need of such protection. In the case of Rankine V American Express Europe Ltd and others (2008) the Court commented “It is worth remembering the context and purpose of the Act. The Consumer Credit Act was introduced to protect the individual unsophisticated in financial affairs in contracts with unscrupulous and sophisticated financial instructions.” This comment was made in relation to one party who was well versed in financial services.

There is concern about how effective the CPMA would be at the grass roots of the credit industry. Even today there are 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. Individual consumers and businesses may not understand the details but, and importantly, they have currently a number of organizations 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 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 service is 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 identify know 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.

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.

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.

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.

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.

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.

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.

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 on 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 determent.

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 go up to credit up 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.

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.

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 in to one new Act with associated SIs 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 utilized under current arrangements.

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, minimizes costs for smaller business in terms of ensuring compliance. Any wholesale change could add to their costs with little perceived benefit.

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.

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.**

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. 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.

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 were 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.

The main benefit would be if non compliance with a code would lead to a question over any fitness test for 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.

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.

(Response submitted by EETSA Specialist)

If you have any queries or would like any further information regarding the EETSA response to this consultation, please contact

Emma Head
EETSA
c/o Suffolk Trading Standards
Endeavour House
8 Russell Road
IPSWICH
IP1 2BX

emma.head@suffolk.gov.uk
Tel: 01508 494779
Fax: 01508 493817

[END]

CONSUMER PROTECTION & MARKETS AUTHORITY
[Financial Conduct Authority]

From: Eastern Credit 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

18 March 2011

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

Eastern Credit 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 Government's 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 have four staff and offer loans, hire purchase and finance leases. As a small company we are able to be flexible in our approach whilst at all times ensuring that we lend responsibly.

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

Derek I Needham
Chairman

CONSUMER PROTECTION & MARKETS AUTHORITY
[Financial Conduct Authority]

From: **Eccles Savings & Loans 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

21st March 2011

Consultation response from Eccles Savings & Loans Limited on "a new approach to financial regulation: consultation on reforming the consumer credit regime".

Summary

- Eccles Savings & Loans Limited was a deposit taking institution authorised by the FSA until March 2007. This gives us a unique insight (for an SME) into the internal costs of regulation under such a regime
- Annual costs of more than £40,000 have been identified
- We are one of the SME's identified by statistics published by Business Innovation & Skills [BIS] in October 2010, as being such a significant a part of the UK economy
- We are a Home Collected Credit business and as such we occasionally serve some of the most vulnerable in society and those identified by the government as at risk of financial exclusion
- Our sector has proved to be susceptible to threats from unauthorised and illegal lenders. Were businesses to leave our industry this would provide an opportunity for such organisations and enforcement costs would be increased.
- At the very least the proposals under consideration would result in significant internal costs for businesses such as ours and these would almost certainly need to be passed on to customers. In many cases these charges may push the cost of our products beyond the point of affordability for some customers, making them prey for the illegal operators.

Eccles Savings & Loans 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 are engaged in the provision of Home Collected Credit to over 8000 households in and around the North West of England, and employ more than 70 people from the local area. In the past four to five years we have had to adapt to revisions to the Consumer Credit Act and adopt changes imposed by the recent industry investigation by the Competition Commission; all of this at a time when the economy at large is under tremendous pressure. It is certainly the case that our customer base has suffered more than its fair share of knocks during the recession. We have survived only by a rigorous approach to improved efficiency which has included, amongst a number of measures, the reduction of staff numbers (at all levels) by more than 10 or almost 13%. This has been achieved through a mixture of redundancy, natural retirement and non-replacement as well as systems re-structuring. All of these bring disproportionate pressure to the SME and we are proud of our ability to adapt. Nonetheless we feel that the current proposals are a step too far and that many businesses of our size would not be able to cope. As a former deposit taking institution, our experience of FSA regulation up until 2007 means that we can quantify the additional costs of this style of regulation. Having pro-actively relinquished our authorised status in March 2007 we have realised annual savings of more than £40,000 annually[1]. Although individual circumstances can change for each business we believe that this is a fair reflection of the type and total of internal costs which can arise under such a regime. Having lived through the recent recession and suffered like many, we feel that we have exhausted the opportunities for additional savings to be identified. We are confident that any new significant cost burden placed upon the business will need to be passed on to the customers.

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

---

[1] Non-Exec Director £16k; Internal Audit costs £15k; Quarterly Returns staff time £10k.

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 Greenhalgh
Managing Director

EQUIFAX

Equifax Ltd's response to the HM Treasury & BIS consultation:
'A new approach to financial regulation: consultation on reforming the consumer credit regime'

Respondent's Details:

Full Name:	Steve Martin
Job Title:	External & Regulatory Affairs Manager
Date:	18th March 2011
Company Name:	Equifax Ltd
Address:	Capital House 25 Chapel Street London NW1 5DS
Mobile:	
Email:	steve.martin@equifax.com

Please acknowledge receipt of this response to the above email address.

Background

Equifax Corporate Profile

Equifax empowers businesses and consumers with information they can trust. A global leader in information solutions, we leverage one of the largest sources of consumer and commercial data, along with advanced analytics and proprietary technology, to create customised insights that enrich both the performance of businesses and the lives of consumers.

Customers have trusted Equifax for over 100 years to deliver innovative solutions with the highest integrity and reliability. Businesses — large and small — rely on us for consumer and business credit intelligence, portfolio management, fraud detection, decisioning technology, marketing tools, and much more. We empower individual consumers to manage their personal credit information, protect their identity, and maximize their financial wellbeing.

Headquartered in Atlanta, Georgia, Equifax Inc. employs approximately 6,900 people in 14 countries through North America, Latin America and Europe. Equifax is a member of Standard & Poor's (S&P) 500® Index. Our common stock is traded on the New York Stock Exchange under the symbol EFX.

Equifax is a registered trademark of Equifax Inc., Atlanta, Georgia. All rights reserved.

In the UK, Equifax operate as one of 3 mainstream consumer credit reference agencies and also supply commercial data, including data on sole traders, partnerships and other SMEs. In addition to the supply of information for credit decisions and credit account management, Equifax also provides data for other purposes such as fraud prevention and money laundering prevention under the Prevention of Money Laundering Regulations. Additionally, Equifax hold and supply the Full Electoral Register under the Representation of the People (England and Wales) Regulations 2001.

As a significant data controller in the UK, we work closely with the Information Commissioner's Office, holding regular meetings with them to discuss best practice and ensure Equifax compliance to the data protection principles.

Response to Consultation

Introduction

Equifax welcomes the opportunity to respond to this consultation.

As a credit reference agency, much of the contents of the consultation have little relevance to the operations of Equifax. We have therefore focused our response only on the aspect of the consultation which directly relates to us, namely the credit reference agency (CRA) licensing category and the opportunity to clarify its definition and discuss related aspects of deregulation.

We have therefore limited our response to Chapter 3, Question 22 only.

Chapter 3, Question 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 note the comment in section 3.42 which highlights the uncertainty as to which types of businesses are caught by the Credit Reference Agency category. We concur that there is a great deal of uncertainly on this matter.

There are currently 3 mainstream CRAs (Callcredit, Equifax and Experian), and 1 niche CRA focusing on data sharing for the payday lending sector (Corelogic Teletrack). All of these organisations facilitate the supply and access of consumer credit performance data about parties located in the UK.

Use of credit performance data in the UK is controlled by the Principles of Reciprocity, administered by the Steering Committee on Reciprocity (SCOR). SCOR is a cross industry forum which operates on behalf of the trade associations, CRAs and industry bodies that it represents.

Clearly, the CRA licensing category was intended to catch such organisations, all of which provide an essential role in the credit lifecycle.

However, the use of shared information is not confined to just organisations involved in the granting of credit. Other uses include, for example, identity and age verification, residency confirmation and employments checks. CRAs provide these services, as do a number of other organisations, and it is these organisations which are often being drawn into registration under the current CRA category. Such organisations do not operate a credit performance data sharing function and, we suggest, due to the very limited risks they pose to consumers of credit, should not need to be licensed under the CRA category.

This change, or clarification, could be achieved by a more precise definition of a CRA under the Consumer Credit Act. We believe there would be no benefit to then create a separate category for other organisations who share data but no longer fall under the CRA category. Whilst these organisations may have an element of their activities which support credit providers, this is typically limited to identity verification and other similar activities. Therefore we do not see the relevance of regulating such organisations under the current licensing regime.

Whilst such action would have the effect of deregulating, from the bounds of the Consumer Credit Act, a wide range of organisations whose function is to share and provide data, it should be noted that these organisation will continue to be regulated by the Information Commissioner's Office, pursuant to current data protection legislation. We believe this to be the most appropriate and relevant place to regulate such organisations.

We are happy to discuss this matter in further detail as required.

EVERSHEDS

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

HM Treasury and the Department for Business, Innovation & Skills

Response by Eversheds LLP

1. **Introduction**

Eversheds LLP is an international law firm whose activities include advising on a wide range of activities in the UK financial services and consumer credit markets. We represent banks, finance houses, retail finance providers and retailers in the consumer credit sphere.

Members of the Eversheds team advised on the implementation of the Consumer Credit Act regime ("CCA") into UK law in 1985, the implementation and development of the role of the FSA and more recently the implementation of the Consumer Credit Directive ("CCD") into UK law. Accordingly the team has great experience of both the CCA and the Financial Services and Markets Act 2000 regime ("FSMA") and the processes necessary to meet and adopt to changes in the regulatory structure.

In addition, following the issue of the Consultation on Reforming the Consumer Credit Regime we undertook a review exercise and workshop with a wide range of clients active in the sector so we could test both our own thoughts as to the proposals and verify them from a client perspective.

2. **Executive Summary**

- The Government's proposals, presented as two simple but unconnected options, confuse two different issues. First, would there be benefit in having the FCA as a regulator covering both financial services and consumer finance activities? Secondly, should the existing CCA/CCD regime be replaced with a rules and principles based regime. These elements require separate consideration and the restrictive nature of the two options put forward in the Consultation does not allow this.

- The proposals to rewrite the CCA regime must not be underestimated in scope and extent. The Government struggled to implement the changes required by the CCD over a two-year timescale when, to a degree, the requirements of the CCD were compatible and harmonious with the existing CCA regime. The view that a wholescale rewriting of the CCA regime can be undertaken within three years is in our view unworkable and impracticable, especially bearing in mind the need for new computer programs to be written, installed and tested once the final rules are known.

- In relation to the appropriate body to regulate a consumer credit regime the different nature of the Financial Services and Markets Act regime, which is based around protecting consumers' money invested with third parties or loans supported by security on their home (whereby the consumer clearly faces a real degree of risk to their own money/assets), has to be distinguished from the position in unsecured consumer credit transactions where the risk lies with the finance house extending the money and not the consumer.

- A detailed Impact Assessment has not been undertaken to establish the full cost for both lenders and consumers in following a change in regulator and more importantly a change in the nature of the regulatory regime. The implementation of the CCD changes cost in excess of £235m and there is no doubt that the proposals outlined in the consultation will cost a great deal more. The implementation costs of the relatively limited changes introduced by the 2006 Consumer Credit Act were £500m according to the PWC assessment after the event so a FSMA-style regime change will inevitably cost more. A detailed Impact Assessment is therefore required to verify that the benefits realised will be proportionate to the costs incurred.

- The role and function of consumer credit in sustaining the UK economy should not be overlooked. What appears to be missing from the Consultation is a vision for the future of the consumer credit market. Is it the Government's vision to reduce the number of lenders providing credit and limit the availability of credit? The proposals envisaged by the Consultation as Option 1 would appear to have this effect. Is this the Government's intention?

3. Response to the Questions in the Consultation

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

We agree that "a healthy consumer credit market which serves businesses and consumers well is essential to economic recovery and growth".

However, neither the assertion that the current market is growing at a pace which is demonstrating a lack of control, nor the implication that this of itself can lead to high levels of indebtedness which are not sustainable, is proved. The figures for the consumer credit lending market (which the appropriate trade associations will provide to the Government) demonstrate a fall rather than increase in the level of consumer borrowing.

Likewise, the suggestion that high levels of consumer credit lending cause consumers to suffer financial difficulties fails to recognise the current causes for the financial difficulties being suffered by consumers. This is a reflection of the current economic climate and in particular the circumstances it gives rise to e.g. unemployment, part-time working and the like. There is no evidence to show that this is a reflection of poor or declining standards in credit lending.

Indeed, following the OFT's Irresponsible Lending Guidance ("ILG") and the introduction of the creditworthiness assessment obligations under the CCD from 1 February 2011 there are greater pressures than ever on the industry not to lend in inappropriate situations. We must observe that no assessment has been made of the causes of the high levels of indebtedness in the current market or what the real causation is for this situation.

Q 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 are not of the view that it has been established that there is a "fundamental weakness caused by the split in responsibility for retail financial services between the CCA and FSMA regimes". Whilst there have been some noted issues and failings identified in the role and activities of the FSA in the current recession, no such evidence is available to suggest that there are any failings in either the CCA regime or that the OFT that have contributed to this. The proportionate approach to lending and the approach to its regulation adopted by the OFT seems to have stood both the test of time and the economic challenges of the late 1980's, early 1990's and the last two years. The lack of coherence in market oversight is therefore purely an issue for the FSA, which the Government are addressing with the new broader regulatory structure and prudential responsibilities which they are implementing for the financial services market.

From a consumer perspective there would appear to be no confusion caused by the split in regulation between the OFT and FSA. It is largely due to consumers having a single point of contact for complaints which are resolved by the financial ombudsman service.

We also note that the Government are proposing that banks, building societies and insurance companies should have two regulators.

Whilst it is fair to say that the CCA is inflexible and could be reactive given its embodiment in primary and secondary legislation care has to be taken in how far this assertion is developed. With the OFT's irresponsible lending powers being developed as it's new risk based approach gathers momentum and the new approaches introduced through the CCD time has to be allowed to see if these changes will provide a continuation of a stable regulatory environment whilst providing the flexibility for policy based issues to be introduced through the OFT's ILG.

In regulatory regime terms we may be at risk of incurring considerable costs in addressing a problem that in reality is not there or only requires marginal measures.

Q 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;

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

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

A fundamental point that the Consultation appears not to recognise is that the risks differ greatly under the two current FSMA and CCA regimes. Under the provision of financial services products and secured loans the consumer's money/assets are generally at risk and therefore the risk potential for consumers is high. Under unsecured lending the risk is the creditor's – will it be repaid by the consumer?

The overriding requirements from a consumer protection perspective in the consumer credit market are therefore to ensure that lending is only undertaken where appropriate given the consumer's circumstances and that once a relationship has been established that the consumer is dealt with fairly. Both these protections are now present in the CCA regime following the adoption of the ILG, the creditworthiness assessment criteria under the CCD and the "unfair relationship" provisions. Time should be taken to assess the impact of these.

In our experience the unintended scope creep in the Payment Services Regulations has had a greater impact and caused greater unnecessary burden of industry than the duality of the CCA/FSMA regimes.

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

This has to be addressed at several levels.

First, if the aim is to "create a world-class regulatory regime that keeps pace with a dynamic consumer protection market; responds to actual or potential gaps in consumer protection; and places proportionate regulatory burden on business" then the attributes of such a market have to be established and agreed upon.

The Government propose the following objectives:

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

These objectives in themselves seem logical. However, the key question is how a balance will be drawn between the four objectives as they are not in themselves totally compatible. The latter two have to be balanced against the first two objectives. From comments made in the Consultation we are not convinced that this assessment has been undertaken to any meaningful degree and the only real consideration to date has been in relation to the first two objectives.

This is borne out by the comments in the Consultation. These speak of the need to "at least maintain – and where possible strengthen – overall levels of overall consumer protection" and "the Government does not expect there to be any overall dilution of current levels of consumer protection under option one". Given the detailed and highly descriptive nature of the existing CCA regime the Government can only meet these criteria by in effect replicating the existing regime in equivalent detail in the rules to be adopted. This would not reflect a simplified or deregulated market.

Likewise, the proposals in relation to an authorisation-based scheme rather than a licensing regime, with potentially creditors adopting responsibility for the activities of credit brokers they use, do not reflect proportionality or cost effectiveness. As the Consultation admits, the costs of business would increase under these proposals. A meaningful Impact Assessment is necessary to assess that the increased costs to business, which would be reflected in the cost of products made available to consumers, will yield benefits to make this transition worthwhile for consumers.

Q 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 key point here is to recognise that there are two separate issues, which the Option 1 and Option 2 in the Consultation do not adequately recognise.

A unified regulatory body having oversight of both consumer credit and financial services does not necessarily mean that an identical regulatory style of regime has to apply. Whilst a unified regulator may assist, given the very different nature of the risks and behaviours required for financial services/secured lending on the one hand and unsecured lending on the other (as noted at question 3 above) a unified regulatory regime may not assist or even in practice be practicable.

The reality is that very different rule books will be required for a consumer credit regime (and indeed different rule books potentially for each element of the consumer credit market given its width and scope). What this means in practice is that the FCA would inevitably have to have separate divisions dealing with different areas, given the materially different rules that would apply, and therefore clarity and coherence would be difficult to achieve in practice.

Improved market oversight may be of benefit provided the information being sought is actually considered but the risk here is that given the importance of consumer credit to the UK economy this market oversight is actually a political consideration rather than a simple objective regulator consideration. (See our comments in relation to question 17 later in this regard).

It seems odd that the FSA, which by its own admission did not perform well as a regulator during the credit crunch, should now be held up as a shining example.

Q 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 two key bodies who have practical and valuable variable operational roles which the FCA may not address are Trading Standards and the Illegal Money Lending team. How will these entities activities be undertaken under a new regime?

With the potential consolidation of the market and reduction of competition that Option 1 could produce, the role of the Illegal Money Lending team becomes all the more important as unregulated activities may increase to meet market demand as smaller players are forced out of the market due to the costs of participation. Likewise Trading Standards provide day to day operational advice in a very cost effective manner through the existing home authority arrangements. How will this sit with the role of the FCA?

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

The inevitable starting point for any new regulatory approach must be constrained by the existing CCD provisions. If the Government is serious about not "gold plating" European directives on implementation into UK law then how can this commitment be met if we retain the existing over-elaboration of the provisions of the CCD, some of which contradict the maximum harmonisation arrangements of the CCD.

If the Government is genuine in its desire to create a simpler, more flexible and more effective regime it should consider, against the backdrop of the CCD, what are the true nature of the protections that will really benefit consumers in the consumer credit market.

For example, the amount of data and information currently sent to consumers would appear to be overwhelming and counterproductive as they do not focus on the key messages or issues given the complexity and detail in the documentation they receive. Subject to those areas which are dictated by the CCD, a sensible approach would be to establish which elements need to be retained from the existing regime to protect consumers and how these elements can best be communicated to consumers effectively. The manner of communication currently appears to be inelegant and ineffective.

If the objective is to deregulate and increase flexibility then the CCD should provide the legislative regime with the principles and rules as a thought through addition rather than simply rewriting current CCA within a FSMA style regime.

The Government should first carefully assess the impact of CCD implementation and not rush to make a decision on political expediency grounds.

Q 8 The Government would welcome further evidence relating to:

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

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

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

Should businesses be protected as if they were consumers? The Consultation indicates that possibly they should, but this was not a view shared by the rest of Europe when the CCD was passed.

Q 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 biggest changes that a rules-based regime could bring are two-fold:

- Whilst in theory there is flexibility, if the impact of this is greater uncertainty as to what the requirements are to meet any particular regulatory obligation this would be detrimental to business. The current CCA regime, whilst complex, is now well understood with creditors being able to readily understand their obligations and implement them. The Consultation seems to envisage that all elements of existing consumer protection would be maintained and therefore creditors could be faced with a very difficult situation. Detailed rules that have to be complied with reflecting the majority of the elements of the existing CCA regime on the one hand, but then principles which the FCA may say prevail and should override the precise requirements of the rules. This is not a sensible or effective approach. The balance between relying on core principles on the one hand but trying to have detailed rules on the other has to be addressed and specific proposals made before significant comments can be made.

- Control over changes to the rules, given their impact on the operating costs for industry, needs to be addressed. Currently the proposal is that a cost benefit analysis is only necessary for "significant initiatives". There is a danger that a constantly changing landscape will put unmanageable burdens on the credit industry and increase costs on consumers and so neither will benefit. This is particularly so at a time of economic uncertainty. It should be remembered that many credit businesses are themselves small businesses.

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

There appears to be no case established yet that a FSMA-style supervisory approach may be more effective in assisting in consumer protection and deliver this at a more appropriate level. Indeed experience to date suggests that this may not be the case. This raises again the question of what evidence there is to suggest that the current consumer credit regime does not meet the interests of consumers and how can any such assessment be made given that the CCD changes were only implemented with effect from 1 February 2011.

It is important that any regulation via the FCA will be based on a proportionate and risk-based approach.

Again, this raises the bigger question of what is the Government's intention behind introducing a FSMA-style supervisory approach? Is it to reduce the number of players in the consumer credit market and reduce it to the medium to larger size players only or not?

Q 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 existing regime naturally has allowed the OFT to link its activities in the consumer protection field to cover both activity relating to the sale of goods and the provision of credit. It would be imperative that the FCA, if it is to maintain the consistent harmonised approach to consumer protection, has effective liaison arrangements with whichever third party body is to adopt the consumer protection role in relation to the sale of goods. The overall proposals in this regard are not clear.

Q 12 Do you agree that transferring consumer credit regulation to a FSMA-style regime to sit alongside other retail financial services regulation under the FCA would support the Government's objectives (as outlined in paragraph 1.18 of Chapter 1)?

For the reasons noted at questions 2 and 3 above, the case that a FSMA-style regime will deliver the Government's objectives has not been made out. It can in fact be argued that if the OFT were given greater information and market oversight powers they could deliver the Government's objectives under the existing regime.

Until the impact of the use of the OFT's responsible lending powers and the CCD can be assessed it is not yet evident that a FSMA-style regime will assist in delivering the Government's objectives. Indeed for the reasons set out in our response to question 4 above it may exacerbate the contradiction between the first two and last two objectives.

Q 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?

As noted above, we consider that there may be benefits in having a single regulator for consumer credit and financial services. However, this has to be distinguished from the question of the regulator having the knowledge and skills to operate in the consumer credit market effectively. Will the appropriate personnel from the OFT who currently undertake these tests transfer across? Without this it will be a serious and time-consuming exercise for members of the FCA to obtain the knowledge of the consumer credit market that currently sits within the OFT.

The use of a single regulator has, for the reasons noted above, to be distinguished from the use of a single style of regulatory regime.

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

The key point is that Option 1 assumes not only a single regulator (which we are in principle in favour of for the reasons noted above) but also a single FSMA-style regime.

There are two key issues that the Government needs to address before considering Option 1 to be viable:

- To what extent would any new regime simply be a replication of the existing CCA rules and very prescriptive in format, as if this is the case flexibility will not have been achieved. The effect would be to replicate the existing regime but with a more expensive authorisation-based overlay but with little change in the nature of consumer protection.

- Can a single rule book be established in reality given the width and variety of products made available under consumer credit, varying from simple and short pay day loans and pawn broking arrangements on the one hand through to long term loans, hire purchase and leasing arrangements on the other. Will this not lead to highly extensive and variable sets of rules so that providers who offer a range of products will have an even more complex set of requirements to manage and adhere to in practice?

Q 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?

Given the announcements that have been already made in relation to the future of the OFT Option 2 was never a realistic option. As noted above we think there should be two separate questions placed with each of these being assessed and addressed separately:

- should there be a single regulator i.e. the FCA; and

- should the regulation of consumer credit move to a FSMA-style regime?

Indeed, should it be decided that a single regulator is the appropriate route, then logically it should be part of the responsibility of this regulator to review and report back in a considered manner on the full impact of the more immediate changes in the CCA regime that have already taken place and in light of that suggest what changes, if any, should be made to regulation. This is also more likely to be a more proportionate and cost effective approach, given the FCA would already have the strains of adopting its role in relation to financial services.

Q 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.

Given the fact that it is the creditors' money rather than the consumers' that is at risk in a consumer credit arrangement there are two considerations that could arise if FSMA-style requirements were to be adopted.

First, with there being at least 96,000 firms currently regulated under the CCA regime, the FCA would not be able to handle such a large number in practice.

Secondly , there would appear to be three elements of regulation to be considered:

- The necessity for a capital requirement would appear inappropriate for a consumer credit FSMA-style regime as there is no risk to the consumer.
- Whilst elements of a FSMA-style regime could apply to all entities (e.g. reporting, systems and controls, enforcement and authorisation) these will need to be tailored on a risk-based approach so they are proportionate and appropriate unless, the intention is to reduce the number of providers in the marketplace.
- Elements of responsibility could, depending on the type of regime, have a material impact on the market e.g. if the current credit brokerage regime was replaced with a appointed representative type regime passing responsibility for a compliance of the credit broker to the lender. Again this could have a material impact on the number of players in the market and could ultimately prove to be anti-competitive.

We very much doubt whether most CCA firms present a systemic risk, and any that do will almost certainly be undertaking other activities already covered by FSMA.

All these points require careful and detailed consideration which will be difficult if a new regime is to be rushed in by 2014.

Q 17 Do you agree that statutory processes relating to FCA rule-making, a risk-based approach to regulation and differentiated fee-raising arrangements could provide useful mechanisms in ensuring that a

proportionate approach is taken to consumer credit regulation under a FSMA-style regime?

A risk-based approach to regulation and fee-raising arrangement is a fundamental requirement given the width and scope/nature of providers in the consumer credit market.

On the fee-raising side this is particularly the case as the current proposals would appear to suggest that the costs of operating in the market will increase significantly.

In relation to the statutory processes the availability of consumer credit is an important factor in the economic health of the UK. Accordingly, there should be an element of parliamentary involvement in the regulatory process given its potential impact on the overall economy.

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

The level of fees has been an area of real concern, particularly for the medium size and smaller providers in the marketplace. A key issue is determining what level of supervision and oversight is necessary in a consumer credit regime as it should not be assumed that this has to be an automatic replication of that currently applicable under FSMA. A highly specific and flexible regime will be required if the focus is to be on those bodies actually advancing credit given the width of other types of activity that the CCA currently encompasses.

Q 19 The Government welcomes: evidence relating to experiences of the current appointed representatives regime; views on how an appointed representatives model might be applied tom 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.

The current appointed representative regime allows a representative to have only one principal within a sector (e.g. insurance, investments). Credit brokers deal with a multitude of lenders, so would need a number of principals within this single sector. The complicated arrangements that would be required between the various principals are likely to be unattractive to principals, and to result in brokers leaving the market.

We have no additional comments to make other than to stress that the adoption of an appointed representative style regime, for example for credit brokers, could lead to consolidation and restrictions on competition within the market and therefore should be the subject of detailed consultation if it is to be adopted.

Q 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.

If a group licensing arrangement is not to be maintained, which will be consistent with adopting a FSMA-style regime, then consideration should be given to linking the nature of the authorisation required and relating to it to the specific activities undertaken. For example, a large number of law firms undertake debit collection activities. If each were required to hold a separate authorisation this would create a large degree of additional work and make additional administrative resource necessary. Is this the intention?

Q 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 position of codes of practice, which have proved a very effective tool utilised by the OFT working in conjunction with trade bodies, must be open to question if an effective principles-based regime is to be adopted. However, it is difficult to comment until the nature and scope of the regime is spelt out.

Q 22 Do you consider that there would be a case for deregulation of certain categories of consumer credit activity in the event of a transfer? Please explain why.

This issue should be a subject of a detailed consideration as part of the overall review as to how to implement a FSMA-style form of regulation.

Q 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 key point is that if a FSMA-style regime is to be adopted that it does meet the flexible deregulated approach the Government has set out as part of its objectives for any new regime. However, this would prevent the Government from simply converting the current prescriptive statutory and regulatory provisions into a set of equivalent rules.

If the Government are to have genuine regard to establishing an effective regime considering risk, proportionality, flexibility, cost and market including competitive impact, then this needs to be a considered and requires a detailed review based on a real understanding of the market and how it works.

It is noted that it is proposed that the FSA consider what changes should be made to adopt a FSMA-style regime. They have no understanding currently of the consumer credit market and therefore will have to spend an awful lot time just understanding exactly how the market currently works. The Government therefore needs to make sure the following criteria are met:

- The consideration of the market and its need from a regulatory perspective is undertaken in detail and meaningfully.

- The fact of the need to regulate that which is necessary and communicated effectively (see question 7 above) needs to be factored in so that the regime is proportionate and effective.

Neither of these requirements can be met if a new regime is to be "rushed" through within three years. This is simply not within the capability of the existing regulators never mind a new body that needs to establish and work effectively such as to the FCA.

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

The treatment of existing agreements needs to be dealt with with some care and consideration. The suggestion that somehow the new regime should be retrospective will only be workable if it mirrors the existing regime. However, if this is the case it begs the question of what benefit the new regime is bringing. Whilst it may seem workable the most proportionate and cost effective way of handling this will be to retain the existing regime for existing agreements and implement the new regime for new agreements.

Q 25 The Government welcomes views on:

(a) how existing licensees could be dealt with; and

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

Given the volume of existing licences, and assumption that a large majority will need to be reflected with some form of authorisation, considerable care needs to be taken in ensuring that some element of grandfathering does take place. The need to set up an effective and considered set of authorisations on the instigation of the new regime means that rather than a "big bang" approach a transitional approach should be adopted.

Q 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 comment on this element.

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

The key factor is that this will be a fundamental change in the regulatory regime. We have currently a very complex regime and therefore changes to it will take time to implement as they affect every aspect of credit agreements lives from their promotion, sales, contracting, day to day information and then default/exit. Accordingly, an extended transitional period will be essential.

Q 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 additional comments.

Eversheds LLP

Eversheds LLP
22 March 2011

Response to the consultation
On
A new approach to financial regulation: reforming the consumer credit regime
Issued by
Department for Business Innovation & Skills and HM Treasury
Dated
December 2010

For any queries please contact
Mrs Gillian Key-Vice
Head of Government Affairs
Experian
Landmark House
Experian Way
NG2 Business Park
Nottingham NG80 1ZZ
Tel: 0115 828 6242
Mobile: 07967 342 666
Email gillian.key-vice@uk.experian.com

Experian Proprietary
Version Final
Date 21/03/11

About Experian

Experian is the leading global information services company, providing data and analytical tools to clients in more than 90 countries. The company helps businesses to manage credit risk, prevent fraud, target marketing offers and automate decision making. Experian also helps individuals to check their credit report and credit score, and protect against identity theft.

Experian plc is listed on the London Stock Exchange (EXPN) and is a constituent of the FTSE 100 index. Total revenue for the year ended 31 March 2010 was $3.9 billion. Experian employs approximately 15,000 people in 40 countries and has its corporate headquarters in Dublin, Ireland, with operational headquarters in Nottingham, UK; Costa Mesa, California; and São Paulo, Brazil.

For more information, visit http://www.experianplc.com.

Response to the Consultation

Notwithstanding the fact that Experian is not a credit grantor, as an organisation licensed under the Consumer Credit Act (CCA) Experian welcomes the opportunity to provide input to the consultation on reforming the consumer credit regime.

Experian is supportive of measures to support consumers (and small businesses) in proposed reforms.

Whilst not a credit grantor, the role of credit referencing is that of a key third party holder of information that is used by credit grantors in making their decisions about the giving of credit. The UK model has developed through the engagement of all stakeholders and Experian is supportive of future developments that will ensure that the system continues to evolve with the trust and support of stakeholders built on transparency and fair treatment of all concerned and, in particular, consumers.

Although consumer credit reference agencies are licensed under the Consumer Credit Act in the UK it is worth mentioning how regulation and legislation work in practice for the industry. For example, relevant legislation is split across a number of different parliamentary acts. Notably the Data Protection Act, the Consumer Credit Act, the Representation of the People Act, the Companies Act as well as bespoke legislation relating to specified public bodies (for example the Social Security Fraud Act 2001, the Child Maintenance and Other Payments Act 2008), all contain details relating to credit reference services.

In considering the proposals outlined in the consultation document Experian is keen to highlight two aspects for consideration by the Department for Business Innovation & Skills and HM Treasury that relate specifically to this industry:

- The need for stakeholders, and in particular, consumers to have confidence in the integrity of the system and the data behind it such that it is appropriate, up to date and accurate.

- Consumers should be confident that such data is held securely and only provided to others in accordance with the law and their consent.

The Government's view of the consumer credit market in the UK is clearly set out and Experian supports the assessment of the market and the overview in terms of diversity and value. Experian also supports the objectives set out in the consultation, namely; clarity, coherence and market oversight, effective and proportionate consumer protection; simplification and deregulation; proportionality and cost effectiveness.

The consultation is clearly directed at the provision of consumer credit and the desire to build more controls and confidence around the granting and management of credit. In this respect, Experian would suggest that credit reference agencies would potentially sit more appropriately under a different regulatory structure than that which is proposed under the FCA.

The consultation paper only mentions credit referencing when looking at opportunities for simplification and deregulation. In paragraph 3.42 it discusses the tightening up of the definition of "licensable activity" so that certain firms are not necessarily required to hold a licence under a new consumer credit regime. The example given relates to the licence category for credit reference agencies and proposes tightening that definition to exclude, and potentially deregulate, the large numbers of other organisations that are currently caught in this category therefore requiring only the main UK bureaus (and of course any others that may start up in this space) to hold a licence.

Experian would be keen to engage in the further discussions on the future controls and how they might be considered for the credit referencing and information industry in particular.