



HM Treasury



Department
for Business
Innovation & Skills

A new approach to financial regulation: transferring consumer credit regulation to the Financial Conduct Authority

summary of responses

June 2013



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1

Introduction

1.1 The Government is committed to reforming regulation of the consumer credit market. A new, more robust regulatory system will help to deliver the Government's vision for a well-functioning consumer credit market, in which firms meet the standards expected of them, lend responsibly and offer a range of competitively designed and priced products and services that meet consumers' needs. On 1 April 2014, responsibility for consumer credit regulation will move from the Office of Fair Trading (OFT) to the new Financial Conduct Authority (FCA).

1.2 The Government published a consultation document on 6 March 2013 which set out the policy and legislative detail underpinning the new regulatory framework for consumer credit under the FCA. The FCA (then the Financial Services Authority) also published a consultation paper on the same day, setting out its high-level plans for regulating consumer credit firms.

1.3 The key secondary legislation to enable the transfer was laid in draft before Parliament on 25 June 2013, along with a final impact assessment. Both the secondary legislation and the impact assessment have been changed and improved in light of views from stakeholders gathered during the consultation period from March to May. This document summarises the responses and highlights policy and legislative adjustments which have been made to take respondents' views into account.

1.4 The Government received almost one hundred responses to the consultation, from a wide range of interested parties from debt advice charities to large banks. A list of respondents (except those who asked for their responses to be treated confidentially) can be found at Annex A. The Government and FCA also undertook a significant programme of stakeholder engagement during the consultation period, which included meetings, roundtables and presentations at workshops and conferences. The Government welcomes the constructive and valuable contributions made by stakeholders throughout the consultation process.

Next steps

1.5 The two statutory instruments (SIs) which have been laid before Parliament are subject to the affirmative procedure and will be debated in both Houses. The Government intends, subject to the Parliamentary timetable, that the legislative framework for the transfer will be made before the summer. In addition, one further SI, subject to the negative procedure, will be published shortly on the Government's website and will be laid and made before Parliament in due course.

1.6 The SIs, once made, will enable firms, from 2 September 2013, to register for interim permissions, based on their existing consumer credit licences: this will allow firms to continue to carry on consumer credit activities from next April.

1.7 The FCA will consult in the autumn on its detailed rulebook for consumer credit, as well as providing a feedback statement on the responses received to its March consultation paper.

Key themes

1.8 The Government welcomes the widespread support for the proposed regulatory approach for consumer credit in responses from both consumer credit sector representatives and

consumer groups. The Government is pleased that stakeholders felt that broadly the right balance has been struck in designing a regime that is tailored to the unique characteristics of the consumer credit market and is proportionate, while ensuring consumers are protected. Industry respondents broadly agreed with “the Government’s vision of a balanced new regime which will support a responsible lending market”; consumer groups also strongly agreed “with the principle that consumers entering the credit market should be better protected from detrimental conduct and product features than they are under the current regime”.

1.9 The Government recognises that timetable for the transfer, driven by the demise of the OFT, is, as one industry respondent put it, “hugely challenging”. The proposed interim arrangements and the commitment to a largely unchanged core of conduct standards were welcomed by many respondents as helpful ways to smooth the transition. Nevertheless, a significant number of industry respondents did not feel that the steps proposed to smooth the transition went far enough. The Government holds firm to the principle that a protracted interim period could be detrimental for consumers and unhelpful for firms, and that certain consumer protections should be in place from ‘day one’. However, Chapter 2 highlights further legislative changes the Government has made to smooth the transition and ensure the interim arrangements work better for firms. The FCA is also considering what more it could do, and will set out its conclusions in the autumn.

1.10 The Government also welcomes the views and supporting evidence respondents provided on the impact of the transfer. It has taken account of stakeholder views in putting together the final impact assessment, which has been laid before Parliament. The impact assessment now includes fuller analysis of the risk of market exit and other unintended consequences of the transfer and new cost estimates, drawing directly on evidence provided in responses.

2

Summary of responses

2.1 The consultation document included a number of specific consultation questions, highlighting the particular issues on which the Government sought comment and evidence. This chapter summarises the views put forward in response to the questions posed in each chapter of the consultation.

Conduct requirements and rules

2.2 Chapter 2 set out the Government's proposed approach to conduct standards in consumer credit regulation. Views were sought on the proposal to carry forward some conduct requirements in the 1974 Consumer Credit Act (CCA) where these could not be easily replicated in FCA rules, subject to a review by 2019 of such retained CCA requirements.

2.3 Respondents were in general supportive of the proposed approach, though a handful of stakeholders preferred wholesale retention of the CCA. Several responses, from both industry and consumer backgrounds, noted the complexity inherent in retaining some parts of the CCA alongside the FCA rulebook. In addition, a significant number of industry stakeholders raised concerns about the timetable for the introduction of the FCA rulebook.

2.4 A number of industry respondents noted that even small changes in transposing the current CCA requirements into rules could have significant implications. Many industry respondents welcomed the FCA's proposal for a six month transitional period to allow firms to get up to speed with FCA rules but sought that this be extended. To help ensure continuity, minimise the compliance burden and smooth the transition, **the Government has given the FCA a power to designate as rules specified CCA secondary legislation which will be revoked on 1 April 2014.** The FCA is also currently considering how it will respond on these issues and will set out its proposals in the autumn.

2.5 There was general support for the proposed review of retained CCA provisions by 2019, though there were very mixed views on the likely outcome of the review. Some industry responses welcomed the prospect of moving to a largely rules-based regime, while others in the industry were keen to see many CCA provisions preserved. Consumer groups' views were also divided: some saw the review as an opportunity to bring the regulatory framework up to date and into line with the FCA's regulatory model, while others were concerned about the potential loss of consumer protections. The Government remains committed to the review as framed in the consultation document, but has decided to include these provisions in a subsequent SI.

2.6 The consultation also sought respondents' views on the scope for industry codes to complement the FCA's regulatory regime for consumer credit: views were very mixed. In general, consumer groups felt that codes added little value and felt that an enforceable, regulator-led solution was preferable; however, one or two thought that codes could play a useful role to help safeguard consumers during the interim period. Some trade associations, code sponsors and firms argued that codes could continue to play an important role alongside regulation. The majority of responses put forward a more nuanced position: codes could play a useful role, depending on the extent of the FCA's rulebook and on the proviso that codes were subject to independent supervision. The Government agrees that codes could play an important role in complementing the FCA regime, but that a number of requirements in codes should be included

in the FCA's rulebook to improve consumer protection. It will continue to work with the FCA and code sponsors to ensure clarity for consumers and firms, and a managed transition.

Authorisation

2.7 Chapter 3 set out how the authorisation process has been designed to suit the diverse nature of the consumer credit market, including a bespoke 'limited permission' regime for certain types of firms. This chapter included consultation questions on the two-tier authorisation approach, the changes to the appointed representatives regime and arrangements for those who currently carry on credit activities under OFT group licences.

2.8 The two-tier approach was broadly welcomed as evidence of the Government's commitment to designing a proportionate regime, tailored to the market. In general, respondents felt that the types of firms in the limited permission category were broadly right, though a number of trade associations argued that their particular sector presented fewer risks to consumers and should therefore be included in the limited permission regime. Some industry and consumer group respondents noted that some lenders may adjust their business models to consumer hire to take advantage of the limited permission regime.

2.9 Terminology seemed to be an issue: a number of consumer representatives expressed concern over the connotations of the term "limited permission", while "lower risk" seemed to be taken to mean "low risk" by many respondents. The Government has asked the FCA to consider possible alternative terminology as it prepares to consult further on the regime in the autumn.

2.10 The Government has made some adjustments to the scope of the limited permission regime. In order to ensure proportionate regulatory burdens on key sectors, **the Government has included broking of vehicle leasing within the limited permission regime**, in response to stakeholder views that this market, a direct competitor to motor dealers who carry on credit broking as a secondary activity, would not be eligible under the proposed criteria for limited permission. **The Government has also included Green Deal brokers in the limited permissions regime.** This reflects that Green Deal brokers are already subject to regulation under Green Deal legislation, which ensures consumers are protected. Allowing Green Deal brokers to take advantage of the limited permission regime is in line with the Government's commitment to ensuring firms, especially those carrying on credit business as a secondary activity, are subject to proportionate regulatory requirements while at the same time ensuring strong consumer protections are in place.

2.11 Most respondents supported the inclusion of not-for-profit debt advice providers within regulation and within the limited permission regime. However, there was concern from some industry respondents about the proposed arrangements for not-for-profit advice providers. Many industry respondents, as well as most respondents from the not-for-profit debt advice sector, thought that not-for-profit debt advice agencies should be required to be subject to the Financial Ombudsman Service. The FCA is considering these issues and will set out its position in the autumn.

2.12 There was general support for the proposals relating to the appointed representatives regime. Most welcomed the modification to the scheme to allow firms with limited permissions to be appointed representatives. **The Government has made a further modification, in response to stakeholder views, to allow lenders which do not apply interest and charges to be appointed representatives.** Lenders that apply interest and charges cannot be appointed representatives because the Consumer Credit Directive requires them to be directly authorised and supervised by the regulator.

2.13 On the proposed arrangements for dealing with those currently covered by group licences, there was most concern about proposals for regulating insolvency practitioners. **The**

Government has taken account of these concerns and has extended the proposed exemption for insolvency practitioners to cover debt advice and associated activity where this is undertaken in anticipation of a formal appointment. However, where an insolvency practitioner is undertaking regulated credit activities outside of his or her formal insolvency practitioner role, he or she will need to seek FCA authorisation.

Scope of regulation

2.14 Chapter 4 set out the Government's proposals on the scope of regulation, proposing that the scope of regulation under FSMA should remain largely unchanged as compared to the scope of regulation under the CCA, apart from the introduction of a new regulated activity in relation to peer to peer lending.

2.15 Peer to peer (P2P) respondents were of the view that regulation of P2P should be proportionate and consistent with regulation for other relevant firms, such as banks, brokers and, where appropriate, activities which fall outside the scope of regulation. **The Government has therefore excluded from the scope of regulation P2P activities where the lender is not an individual or a relevant person and where the borrower is an individual acting for business purposes and borrowing more than £25,000.** This will ensure that small partnerships and sole traders entering into business loans in excess of £25,000 are treated consistently, as this mirrors the criteria used to exempt agreements under the CCA. This ensures a level playing field for P2P platforms. The Government has engaged at length with the P2P industry and is confident that that the proposed regulation achieves the correct balance between consumer protection and proportionality and expects the FCA's rules consultation to further demonstrate this balance. The proposed regulation of P2P treats P2P platforms equivalently with other firms unless justified by potential for consumer detriment.

2.16 A large and diverse set of respondents supported the proposal to merge the definition of credit broker and credit intermediary. A few respondents raised concerns about unintended consequences of merging the definitions, and the Government has addressed a number of these concerns in the final RAO SI.

2.17 A couple of consumer organisations raised concerns about the plan to remove third party tracing agents from the scope of regulation, while a similar number of industry respondents welcomed the move.

2.18 There were no objections to narrowing the definition of credit reference agencies, in order to capture only those whose main business is to provide credit references.

2.19 Some respondents called for a tailored approach to second charge mortgages. The Government does not propose to change the regulatory framework for second charge mortgages at this stage, because the EU Mortgages Directive is due to be finalised later this year and implemented two years later. Making changes specific to second charge mortgages now would risk imposing two significant transitions on firms: requiring industry to make changes and adapt to a new regime from April 2014, only for the Directive to impose another transition shortly afterwards. The Government will instead consider these responses as part of the implementation process of the Mortgages Directive, which will include consultation by the Government and the FCA.

2.20 Most respondents agreed with the exemptions proposed to be carried forward from the current regime. Respondents from the insurance industry pressed for an extended exemption for instalment credit paid over twelve months. In response to stakeholder feedback, the Government has adjusted the current exemption for mail order agents to reflect how the model operates today.

2.21 The Government has decided to launch a further targeted consultation on the regulatory arrangements for local authorities which carry on unsecured lending (as the Consumer Credit

Directive requires that such activity cannot be exempt from regulatory oversight). It will set out the conclusions of this consultation exercise in the autumn.

2.22 A number of respondents, ranging from debt charities to debt management firms, raised concerns about the activity of debt management lead generators. However, very little evidence of detriment resulting directly from their activities was cited and on this basis, the Government does not have sufficient evidence to create a new regulated activity of effecting introductions to a source of debt advice. The Government remains concerned about the potential for detriment as a result of lead generation in the debt management sector and will keep this issue under review. Work currently underway by the Information Commissioner's Office and the Ministry of Justice on how personal data is obtained and sold in connection with the Data Protection Act and the Privacy and Electronic Communications Regulations will include such lead generators within its scope.

Enforcement and redress

2.23 Chapter 5 set out the Government's proposals to repeal a number of criminal offences in the CCA. Most respondents thought this was appropriate, given the FCA's stronger enforcement powers. One or two consumer groups raised concerns about the approach, largely because the effectiveness of the application of the FCA's enforcement toolkit in the consumer credit market is unproven, and one suggested that these should not be repealed until the end of the interim period. Most respondents supported the proposal that retained criminal offences should be subject to review by 2019.

2.24 Some respondents sought clarity over the role of Local Authority Trading Standards, in particular how information and intelligence from Local Authority Trading Standards relating to breaches of the rules will be handled by the FCA.

Interim permissions

2.25 There was general support from respondents for the proposed interim permissions regime. Only one or two responses called for a 'grandfathering' approach. A few currently FCA-regulated firms called for those firms already subject to FCA regulation for other financial services business to be grandfathered into the new regime.

2.26 Some raised concerns about the costs and burdens of the requirement to register for interim permission and to apply for full authorisation within two years. Many industry respondents felt that the interim period was too short and a few raised concerns about the FCA's capacity to process all authorisations in two years. A range of respondents noted the importance of an effective communication campaign to ensure that firms are aware of the requirements relating to interim permissions.

2.27 Respondents raised concerns about the limitations of the interim permission regime, in particular that a firm with interim permission cannot act as principal to an appointed representative. In light of these concerns, **the Government has provided for greater flexibility: with the FCA's agreement, prospective appointed representatives will not have to seek full authorisation for all their credit activity at the point of applying for full authorisation (if such a firm wished to be an appointed representative for particular activity). As an alternative, such firms could also request to delay their application for full authorisation in anticipation of the principal becoming authorised.** Some respondents sought clarity on what changes can be made by a firm under its interim permission, without triggering a need to apply for full authorisation.

2.28 Consumer groups highlighted the importance of ensuring continued consumer protection during the interim period.

A

List of respondents

Abundance Generation
The Advertising Association
Advertising Standards Authority
Amigo Loans
Assetz Capital Ltd
Association of British Credit Unions Ltd
Association of British Insurers
Association of Chartered Certified Accountants
Association of Chief Trading Standards Officers
Association of Finance Brokers
Association of Mortgage Intermediaries
Association of Professional Compliance Consultants
Association of Short Term Lenders
Aviva
AXA UK
Bates Wells and Braithwaite
BCCA
Big Society Capital
Bridgend County Council
British Bankers' Association
British Vehicle Rental and Leasing Association
Building Societies Association
Business Loan Network Ltd
Chartered Accountants Regulatory Board
Christians Against Poverty
Citizens Advice
City of London Corporation
Civil Court Users Association
Community Development Finance Association
Consumer Council (NI)
Consumer Credit Association
Consumer Credit Trade Association
Consumer Finance Association
Credit Action
Credit Services Association
Customer Contact Association
Debt Resolution Forum
Direct Marketing Association
Enova
FCA Practitioner Panel
Finance and Leasing Association
Financial Services Consumer Panel
Funding Circle
Glasgow City Council, Trading Standards
Glasgow Trading Standards
Greater London Authority

Harrington Brooks
Homes for Scotland
Incorporated Society of British Advertisers
Institute of Chartered Accountants in England and Wales
Institute of Chartered Accountants in Scotland
Institute of Credit Management
Insolvency Practitioners Association
Irish League of Credit Unions
Lloyds Banking Group
Martin Harban
Money Advice Service
ML Governance Associates Ltd
National Pawnbrokers Association
National Trading Standards Board
Nick Lord
Ocean Finance
Payplan
Peer2peer Finance Association
Pricewaterhouse Coopers
Professor Eva Lomnicka, Dickson Poon School of Law
Provident Financial plc
R3
RateSetter
Retail Motor Industry Federation
Royal & Sun Alliance
StepChange
Society of Chief Officers of Trading Standards in Scotland (SCOTSS)
Scottish Government
Scottish Illegal Money Lending Unit
Think Finance
Trading Standards Institute
Trowers & Hamlins LLP
UK Cards Association
UK Consumer Credit Reference Agencies
Which?
Zero-credit Ltd
Zopa Limited

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