Reforming Competition and Consumer Policy

Response from the Consumer Credit Trade Association

Introduction

The Consumer Credit Trade Association (CCTA) is one of the oldest trade associations in the UK. Established in 1891, we have a long and influential history. Our modern-day objective is to support and develop an effectively regulated alternative lending market. We strive to provide responsible access to credit for all.

Our members might be described as alternative lenders, developing alternative credit products and serving customers often ignored by mainstream financial services. Member firms include lenders providing: car finance; guarantor loans; home-collected credit; short-term loans; and smaller businesses working in niche lending sectors.

The CCTA is pleased to have the opportunity to respond to the consultation on *Reforming Competition and Consumer Policy.*

General Comments

Alternative dispute resolution

The proposals on alternative dispute resolution (ADR) would clearly have a significant impact on firms.

The proposals would result in a radical reduction in the time allowed for firms to investigate and consider all the information relating to a complaint. There are practical reasons, for example seeking clarification from the customer or third parties, that remove control over timing.

The proposals do not take account of the tactics of some claims management companies (CMCs) in flooding firms with hundreds or thousands of complaints within a short space of time.

Nor does the consultation consider whether the respective ADR services could handle an increase in the number of complaints. The Financial Ombudsman Service (FOS) already has a large backlog of complaints. Increasing the flow of complaints to the FOS is likely to simply add to that backlog, so is unlikely to be in the interests of consumers.

Fake reviews

There have long been concerns about the prevalence of fake online reviews for a variety of goods and services. However, there is a risk that whatever action the Government takes could have the extreme effect of preventing firms from asking actual customers to submit reviews. The biggest impact of such a move would be on small firms with limited advertising budgets, those who rely on customer reviews as a vehicle for increasing brand awareness.

Care needs to be taken so that any intervention focuses tightly on fake reviews. Consumer reviews can be very valuable for customers and small businesses alike. Major review sites already flag reviews from customers who have been invited to review a product or service. This ensures customers reading reviews are able to put reviews into context.

Competition and Markets Authority remedies

The CCTA agrees the CMA should be able to review and amend or revoke remedies if they have become unnecessary.

Specific Questions

CMA Powers

Q8. Will government's proposed reforms help deliver effective and versatile remedies for the CMA's market inquiry powers?

The CCTA agrees the CMA should have expanded powers to periodically review' and if necessary vary, the remedies it imposes. Markets can change rapidly, both as a result of intervention by the CMA and as a result of the general evolution of markets. This can result in CMA remedies being overtaken by events.

CMA remedies in the both the home-collected credit market and the high-cost short-term credit (HCSTC) market arguably need to be revisited, to take account of changes in the markets.

Both the home-collected credit market and the HCSTC market have reduced in size dramatically since the implementation of the CMA remedies. Market leaders in both markets have left the market. As well as changes in these markets, there has been a growth in the use of general price comparison websites. The CCTA believes that, as a result, a requirement for specific price comparison websites for these markets is now redundant.

The CCTA believes CMA remedies should also be reviewed in the context of effectiveness. For example, one of the CMA remedies for HCSTC is an annual summary of borrowing costs. It is not clear how effective this remedy has been or whether the intended impact has been overtaken by changes in the market.

Q9: What other reforms would help deliver more efficient, flexible, and proportionate market inquiries?

There is a broader issue with how CMA remedies work with general regulation of markets. For example, FCA regulation of financial services in general is evolving constantly while CMA remedies remain unchanged.

In addition, it can be a challenge for firms, particularly new entrants to markets, to ensure they are familiar with and comply with all the relevant requirements.

The CCTA believes that, once the CMA completes a market investigation and implements remedies, the CMA should consider handing over responsibility for reviewing and updating remedies to the relevant regulator. This would help ensure that regulation of firms is consistent and reviewed regularly to ensure it keeps pace with other regulatory change and developments in the market.

Fake Reviews

Q42. Should government add to the list of automatically unfair practices in Schedule 1 of the CPRs the practice of (a) commissioning consumer reviews in all circumstances or (b) commissioning a person to write and/or submit fake consumer reviews of goods or services or (c) commissioning or incentivising any person to write and/or submit a fake consumer review of goods or services?

Q43. What impact would the reforms mentioned in Q42 have on a) small and micro businesses, both offline and online b) large online businesses and c) consumers?

There have long been concerns about the prevalence of fake online reviews for a variety of goods and services. Genuine consumer reviews can be very valuable for customers and small businesses in particular. As such, care needs to be taken so that only fake reviews are tackled and that genuine reviews can continue.

Option (a) above would effectively ban firms from commissioning any reviews at all. The biggest impact of such a move would be on small firms with limited advertising budgets, those who rely on customer reviews as a vehicle for increasing brand awareness. It is difficult to see what the justification for such a move could be.

The CCTA agrees that firms should be banned from commissioning or incentivising fake reviews. There should be no downside from either of these approaches. Firms and customers would benefit from genuine reviews only being listed. Implementing either of options (b) and (c) would reinforce work done by online review sites to weed out fake reviews.

Q45: Should government add to the list of automatically unfair practices in Schedule 1 of the CPRs the practice of traders offering or advertising to submit, commission or facilitate fake reviews?

The CCTA agrees that the practice of traders offering or advertising to submit, commission or facilitate fake reviews should be added to the list of automatically unfair practices in Schedule 1 of the CPRs.

Balancing burdens on businesses

Q48. Are there examples of existing consumer law which could be simplified or where we could give greater clarity, reducing uncertainty (and cost of legal advice) for businesses/consumers?

Many provisions of the Consumer Credit Act (CCA) still apply despite significant changes across the market. This renders some provisions almost impossible to apply. Other provisions do not appear to work in the best interests of customers.

The Financial Conduct Authority (FCA) has done some work to review elements of the CCA. However, until action is taken to reform the provisions in the Act issues remain. The example below illustrates some of the issues.

Current rigidity in Consumer Credit Legislation when seeking to assist customers in arrears

Covid-19 laid bare how inflexible some current consumer legislation is. In particular:

- The necessity to send notices of statements in arrears (NOSIAs) even if there is an understanding of how arrears will be paid. The arrival of a NOSIA can cause confusion to customers who cannot see their purpose if they have agreed a payment deferral. However, under the current rules the failure to send NOSIAs is severe with the lender losing their right to enforce the agreement and the interest.
- The difficulty in looking to amend credit agreements. A modifying agreement may be needed. This is an unnecessary hoop for something as simple as extending the final payment date (with no material impact on the customer's debt). Customers do not understand why a formal agreement is needed but, for the lender, a failure to do so can result in an unenforceable agreement.

Whilst it is important that customers are protected, the current legislation actually discourages lenders from assisting customers because offering forbearance can become a minefield.

Possible solutions include:

- An ability to extend or defer payments on credit agreements without the need for a modifying agreement. This could be limited to agreements in which no harm will be caused to the customer, such as those where interest is set at the start.
- Less harsh punishments for the failure to send NOSIAs. An obvious one would be that leave of the court being required to enforce the agreement. This would reduce the potential risk of a customer (or claims management company) looking to use an innocent failure as a way to earn a windfall.
- The ability to dispense with NOSIAs altogether in specific circumstances, such as where arrears have been paid prior to NOSIA being issued or where an agreement to deal with the arrears has been made.

Improving Alternative Dispute Resolution (ADR)

Q66. How can regulators and government balance the need to ensure timely redress for the consumer whilst allowing businesses the time to investigate complex complaints?

The proposals on alternative dispute resolution (ADR) would have a significant impact on firms.

The proposals would result in a radical reduction in the time allowed for firms to investigate and consider all the relevant information. If a company needs to seek further clarification from the complainant, then timing is no longer in their hands.

The proposals do not take account of the tactics of some claims management companies (CMCs) in flooding firms with hundreds or thousands of complaints within a short space of time.

Nor does the consultation consider whether the respective ADR services could handle an increase in the number of complaints. The Financial Ombudsman Service (FOS) already has a large backlog of complaints. Increasing the flow of complaints to the FOS is likely to simply add to that backlog, so is unlikely to be in the interests of consumers.

If the Government decides to proceed with proposals to cut the amount of time a firm has a resolve a complaint, the CCTA believes the Government would also need to introduce some additional measures to deal with situations where not enough information is provided or a complaint is particularly complex.

Stop the clock

One potential solution would be for firms to have the ability to ‘stop the clock’ by requesting additional information and/or clarification. This is similar to the current provisions around DSARs.

Introduce an interim decision

Another option could be for firms to issue an 'interim decision' within 4 weeks, which gives a complainant 8 weeks to respond with additional information. If information is provided, then the lender has 4 weeks to provide their final decision. If no response is received, then the 'interim decision' is made final, and the complainant then has the right to refer the complaint to an ADR service.

The main benefit would be that complaints which go back and forth between the parties are more likely to be 'fully formed' and easier for ADR providers to consider.

Q67. What changes could be made to the role of the 'Competent Authority' to improve overall ADR standards and provide sufficient oversight of ADR bodies?

A major issue for CCTA members is the periods of time during which the FOS – the ADR mechanism for financial services – continually reinterprets the principles or rules that apply to a sector.

It is not the role of an ADR provider to re-interpret or challenge rules put in place by the relevant regulator. There is a risk that an ADR service could, in effect, become a second regulator. This can cause confusion for firms and potential detriment for consumers. CCTA members have reported cases where the approach taken by the firm has been agreed by the FCA, only to be revisited subsequently by the FOS.

This divergence in approach creates confusion and reduces the influence of the regulator on the behaviour of firms. Businesses are unclear whether the regulator (the FCA) is the primary source of direction on compliant execution of compliant business models, or the FOS.

Regulators should be given the power to direct alternative dispute resolution providers, particularly on key issues such as how the regulator's rules should be interpreted. In specific cases where the regulator has agreed a particular approach by a firm, the regulator should be required to alert the ADR provider to this.

The CCTA believes the accountability of ADR providers needs to be strengthened. Improved accountability would not harm the impartiality of an ADR provider. What is important is impartiality relating to the firm and the customer. Taking account of, and being accountable to, the regulator does not affect this.

For example, the FOS is held accountable currently by the Treasury Select Committee. While this arrangement ensures that the FOS has to answer publicly for its approach and decisions, it is not sufficient to ensure the FOS fulfils its intended functions in general.

Improved accountability would help identify areas where rules followed by the ADR are not working well and/or are causing issues for consumers. It would also help to ensure that backlogs of complaints do not build up.

In the case of the FOS, the CCTA believes FOS should be required to provide regular detailed reports to the FCA. This would help improve the accountability of the FOS. The FCA should also be required to:

- direct the FOS to take action when it identifies issues; and
- review and amend the rules applying to the FOS when operational and/or issues of interpretation are identified.

Q68. What further changes could government make to the ADR Regulations to raise consumer and business confidence in ADR providers?

The CCTA agrees with the Government proposal to strengthen the minimum service expectations of all ADR providers. It is right to focus on neutrality, efficiency, accessibility, and transparency to improve the quality of ADR.

As discussed above, improved accountability of ADR providers would help raise consumer and business confidence.

The annual ADR report produced by ADR providers is a useful source of information, but the CCTA believes the requirements around this report need to be strengthened. For example, currently the FOS 'publishes' the report by uploading it onto the FOS website. It is not easy to find and there does not appear to be any effort to draw attention to it.

The CCTA believes it would be helpful for consumers and firms if ADR providers, including the FOS, were required to publicise the annual ADR report and include the content in published annual reports and accounts.

Collective redress

Q72. To what extent do you consider it necessary to open up further routes to collective consumer redress in the UK to help consumers resolve disputes?

In financial services the Financial Conduct Authority (FCA) already has the power to look at issues that stretch across a sector. Through FCA policy, supervision, and enforcement there are options to tackle systemic problems.

There is an already an issue with claims management companies (CMCs) exploiting existing complaints mechanisms with large volumes of speculative and spurious complaints. There is a significant risk of encouraging this type of behaviour if further routes to collective consumer redress were opened up. The result could be an even more dominant claims culture in the UK.

Opening up further routes to collective consumer redress also risks creating confusion and duplication with existing routes for redress.

Q73. What impact would allowing private organisations and consumer organisations to bring collective redress cases in addition to public enforcers have on (a) consumers, and (b) businesses?

The further growth of a claims culture in the UK would have financial implications for both private firms and the public sector.

Successful claims against the public sector would have an obvious impact on the public purse.

In the private sector, the impact is likely to be a much more cautious approach from firms in sectors targeted by claims. This can a result in a reduction in supply and an increase in the number of consumers unable to access a range of goods and services.

Following an onslaught of claims about consumer credit, fuelled largely by CMCs, a number of firms (including market leaders) have left the market. This has reduced the supply of credit available to customers. Reduced access to credit has direct implications for customers and for the economy as a whole, as a result of reduced spending power.

Consumer Credit Trade Association
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