Mutual Clothing and Supply Company Limited response to CMA Strategic review on 33 market remedies Provisional Decision and the Home Credit Market Investigation Order 2007

Firm name: Mutual Clothing & Supply Company Limited
Firm Type: Home Credit Lender
Market: Home Collected Credit
RE: Home Credit Market Investigation Order 2007 (Varied 2011 and 2024)

Dear CMA review team

Mutual Clothing and Supply Co. Ltd. (Mutual) are a family owned and run home collected credit (HCC) lender operating in the East Midlands. Following the market exit of other firms, Mutual are the sole remaining 'large lender' under the Order. Since 2021, four of the five 'large lenders' have exited the market.

We agree with the CMA's assessment that there has been a change of circumstances and that Parts 2, 4 and 6 of the Home Credit Order are no longer appropriate and should be removed[1].

We see clear evidence of a change in market circumstances which means the **all of remaining remedies** in the Order should be removed.

The collapse and exit of all other 'large' home collected credit firms (including all the national firms) and the exit of significant numbers of smaller HCC firms means:

1) There is no longer a home credit "market" on its own and the remaining HCC lenders are competing in a broader credit market.
2) Given the market collapse, the adverse effects on competition (AEC) within home credit no longer exist.
3) The Order is now no longer relevant because of the significant market changes.
4) The remedies in the Order are no longer appropriate because they will have no impact.

Provisional decision to retain Part 5 of the Home Credit Order

We do not agree with the CMA's provisional view that Part 5 of the Order pertaining to Early settlement Rebates (ESRs) should be retained.

In summary, the reasons we think it should be removed along with the other remedies are:

- The purpose of ESR was to provide immediate relief from higher prices as a result of the Adverse Effect on Competition (AEC) found by the Competition Commission. Because of the significant change of circumstances in the market, the AEC no longer exists.
- The ESR remedies were ineffective in passing a benefit on to the customer because the main home credit firm Provident (whose market share was 75%) increased the price of their loans thus nullifying any benefit to the customers.
- The economic justification for the ESR remedy was based on an analysis of Provident's business model. Now that Provident has exited the market, the justification no longer holds.
- The remedy creates an unlevel playing field with other credit products which distorts fair competition.
- There are upcoming regulatory changes to the ESR regime which will trigger another Remedy review if the measure is not removed.

[1] Our evidence for this view was provided in our response to the Strategic review consultation

We provide detailed evidence for these reasons below.

Early Settlement Rebates (ESR) remedy Part 5 of the Home Credit Order

The Competition Commission's final report 2007 concluded in paragraph 3.142 that:

> *We therefore conclude that, in the words of our guidance, 'profits are substantially in excess of the cost of capital for firms that represent a substantial part of the market', and have been so persistently.*

The Competition Commission's final report concluded in paragraph 7.36 that:

> *In our provisional findings, we estimated that in the five-year period from 2000 to 2004, the relevant market as a whole generated net profit in excess of the cost of capital of around £550 million, of which Provident accounted for around £500 million*.

These estimates of excess profits were revised to £375 million (£75 million a year: paragraph 7.38) but it is clear that Provident accounted for most of these profits.

The Competition Commission's final report stated in paragraph 9.105 that:

> *We have found that the detrimental effect on customers which has resulted from or may be expected to result from the AEC is that customers pay higher prices for home credit than would be expected in a competitive market (paragraph 8.11). We have also found that customers who exercise the right to settle early are receiving rebates which are not 'fair' in terms of what the lender would receive if rebates reflected cost savings (Appendices 3.4 and 9.2). We thus believe that all borrowers are paying higher overall prices than would be found in a competitive market and that, as those electing for early settlement are getting too low a rebate, they are contributing to the overall excess.*

The Competition Commission's final report stated in paragraph 9.106 that:

> *We said in paragraph 9.5 that in general we preferred remedies which enhance competition to those which bear directly on customer detriment, and our package of remedies reflects that preference. However, we do not think that anything else in our package of remedies would achieve an increase in the level of rebates. We consider that the low level of rebates is an aspect of price that requires direct remedial action to address the identified customer detriment.*

The Competition Commission sought to address the 'excess profits' being made in the home credit market (predominantly by Provident) in part through measures to improve competition but also by giving customers direct remedial relief through the ESR measures.

There has been a clear change of circumstances in the home credit market and excess profits in the sector no longer exist because of the market exit which has taken place. The AEC no longer exists because of the significant change of circumstances in the home credit market.

Ineffectiveness of the Part 5 ESR remedy

In 2012 Provident's home credit market share based on customer numbers had increased to 75% of the total market (up from 62%).[2]

As noted in the Competition Commission Home Credit evaluation which reported in February 2013[3], the ESR remedy was costing Provident £30m per year (see table 4 Impact of change to ESRs).

However, by 2012 Provident had increased the price of their main 1-year loan product by 26%[4]. This was the main price shown to customers on their website and from our understanding, the main loan product customers received. Table 5 of the home credit evaluation shows:

Provident's main 1 year product	Term (weeks)	Total charge for credit per £100 borrowed	Increase %	APR %
2005 1-year product	55	£65.00	-	177.0
2012 1-year product	52	£82.00	26%	272.2

Any benefits customers received from the increased ESR were completely negated by the price increase Provident made to their main loan product.

We note that Morses Club also put their prices up on their one-year loan product by 20%.

In our view the remedy was ineffective at passing any benefit to customers because of these price increases.

The economic justification for Part 5 remedy no longer holds

In 2007, The Competition Commission produced analysis of the ESR in appendix 3.4 and appendix 9.2 of its final report[5]. These analyses were based heavily on Provident's business model with its self-employed agent model and high refinancing levels of customer loans. The remaining lenders in the market operate very differently from Provident. For instance, we employ our agents and face higher costs through employment taxes such as national insurance which Provident did not face.

Now that Provident has exited the market, the justification for the higher ESR regime for home credit no longer holds.

Competition with other credit products

The CMA references its 4Ps programme in its provisional decision document. We can see that one of these Ps is "Process" where the CMA mentions:

> It is vital for investor confidence that all businesses feel listened to by the CMA; understand what we are doing and why; and recognise a sense of fairness and consistent treatment across all investigations.[6]

[2] Home credit remedies evaluation Table 2
[3] Home credit remedies evaluation Table 4
[4] Source: Home credit remedies evaluation table 5
[5] [ARCHIVED CONTENT] Home credit market investigation | Our work | Competition Commission
[6] New CMA proposals to drive growth, investment and business confidence – Competition and Markets Authority

We compete with other credit products which weren't in existence when the Home Credit Order came into effect in 2007. These are credit products such as High-Cost Short-Term Credit (HCSTC) and short-term instalment loans which provide loans with durations of 1 year and less.

We see it as fundamentally unfair and inconsistent, as well as a distortion of competition, to require home credit firms to provide higher ESRs than firms providing these credit products. This is particularly the case because:

a) HCSTC and short-term Instalment loans have higher total cost of credit than our home credit loans; and
b) HCSTC and short-term Instalment loans will have lower cost of provision to the lender because they do not face the agent and branch network costs which underpin the home credit model.

We are unaware of any reasonable rationale why the market for small sum loans of durations of 1 year and less should be tilted to the advantage of one group of credit products over another.

Forthcoming changes to the Consumer Credit Act 1974 (CCA 1974)

There are forthcoming changes to the regulatory requirements including in the Early settlement and rebate area of the CCA 1974 (sections 94-97A)[7]. In the HMT consultation on reform of the CCA1974[8], Early Settlement Rebates (ESR) are discussed in sections 4.34 to 4.39 where the consultation notes in 4.35 that:

> "Stakeholders on all sides have raised concerns about the complexity of the current process, in particular the notice requirements and rebate calculation"

In paragraph 4.37 page 47. The HMT consultation states:

> "The Government considers that, to achieve the objective of creating a more modern and flexible regime, it would be preferable for requirements in relation to early settlement, rebates and compensatory amounts to be in FCA rules rather than legislation. **The Government therefore will repeal Sections 94 to 95B and 97 to 97A and these will be recast into FCA rules** (as appropriate and subject to any consultation").

The government have made it clear that the ESR regime will change in the near future.

Absent a revocation of the Home Credit Order in its entirety, this change will trigger a further review of the CMA's Home Credit Order as the ESR legislation is recast into FCA rules. To avoid disproportional costs to both the CMA and to firms, the CMA should revoke Part 5 of the order in preparation of the upcoming reform of the CCA.

This will allow the FCA to consult and decide on the appropriate level of ESR for all shorter duration (those durations of less than a year) consumer credit agreements. Given that the FCA can change it's rules (subject to consultation), the new ESR is likely to be more flexible as noted in the government consultation rather than the current regime which is based in legislation.

[7] Consumer Credit Act reformed to protect consumers and support modern finance - GOV.UK
[8] HM_Treasury_-_Policy_statement_on_reform_of_the_Consumer_Credit_Act_1974.pdf

The ESR regulations

In paragraph 21.16 of the CMA's provisional decision, the CMA state that Part 5 of the Order offers home credit customers advantageous terms for early settlement rebates when compared to other consumer credit products. The footnote describes this as:

> *Under the Consumer Credit (Early Settlement) Regulations 2004, consumers are entitled to an early settlement rebate. The Order requires home credit agreements to include a contractual right to an early settlement rebate and amends the basis for calculating this when compared to the 2004 Regulations. Absent the Order, where a consumer notifies a home credit provider of this, the provider can defer settlement date by one month. A provider can also, regardless of whether a deferment has been applied, calculate the sum due by reference to a repayment date 28 days into the future. The Order limits this to 13 days (Article 25(2)(b)) and removes the ability to apply a deferment (Article 25(2)(c)). These combined factors can reduce the additional interest due by approximately 45 days, and makes provision for calculating when earlier scheduled payments are to be treated as having been paid (Article 25(2)(a)).*

The majority of home credit agreements which are settled early, will receive a ESR based on the settlement date being 13 days after the settlement notice date (instead of 28 days), **a reduction of 15 days**. It is only for agreements where the duration is longer than 1 year which receive a reduction of interest of 45 days.

In the ESR legislation, there is a clear difference between "settlement date" used in the ESR calculation and "deferment of the settlement date".

Absent the Order, the home credit provider can only **defer** the settlement date by one month where the agreement provides for the credit to be repaid over, or at the end of, a period which is **more than a year after the relevant date**[9]. The relevant date is the date of making the agreement.

The deferment of the settlement date only applies to home credit agreements with a duration of 1 year or more. In effect, this impacts a minority of agreements as most home credit agreements have durations of less than 1 year[10].

The Order requires that 'settlement date' used in the early settlement rebate calculation cannot be more than 13 days after the notice of settlement was received by the lender (reduced from 28 days).

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[9] The Consumer Credit (Early Settlement) Regulations 2004 Section 6 Deferment of settlement date

[10] By number, 18% of loan agreements issued by Mutual are for a loan duration longer than 1 year.

Summary

For the reasons stated above, our view is that there is clear evidence of a change in circumstances in the Home Credit market which means the remedies in the Home Credit Order are no longer appropriate.

We think the CMA should remove the Home Credit Order in its entirety.

Respondent details

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