

MS14/6.2: Annex 8

Market Study

Credit Card Market Study

Interim Report: Annex 8 - Review of terms and conditions

November 2015

Abbreviations used in this paper

- APR Annual Percentage Rate
- CCA Consumer Credit (Agreements) Regulations 2010
- CCD Consumer Credit (Disclosure of Information) Regulations 2010
- CONC Consumer Credit sourcebook
- SECCI Standard European Consumer Credit Information
- CONC Consumer Credit Sourcebook

1 Executive summary

- 1.1 We reviewed a sample of firms' terms and conditions to better understand the information presented to consumers when choosing and applying for a credit card. Our review considered pre-contractual information, contractual information and the availability of information on websites. It should be noted that we have not undertaken a legal or compliance review of terms and conditions and that we did not assess the terms under the Unfair Terms in Consumer Contracts Regulations 1999.¹ Our review found:

Pre – contractual information:

- Results across the range of cards were mixed. In some cases, information appeared clear and fairly easy to follow, without use of complicated or legalistic language. However, some cards did not present information as clearly.
- Key information, such as rates, APRs and charges, was clear.

Contractual information:

- Some providers had more than one set of terms and conditions for one card. One used a single booklet consisting of various terms and conditions and credit agreements for the different cards they offer. Both of these approaches can make it difficult for consumers to identify which terms and conditions apply to them.
- Some information was written in such small font that it was not easily legible.²

Availability of information on card providers' websites:

- The majority of websites we reviewed were reasonably easy to navigate. We found that, when used, the use of summary boxes presented fees and charges in a clear and easily accessible manner.

- 1.2 This report outlines how we conducted our review and what we found in more detail.

¹ From the 1st October 2015 Parts 1 and 2 of the Consumer Rights Act 2015 revoked and replaced the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs).

² As required under CONC 3.3.2R (2) and Regulation 8 of the Consumer Credit (Disclosure of Information) Regulations 2010.

2 Introduction

Background

2.1 In our terms of reference we stated:

"We consider that some features of credit cards may not be transparent. [...] the exact terms and conditions of a credit card contract (e.g. the credit limit) are not clear to consumers until they have applied and been accepted for a specific credit card, as the advertised terms and conditions can differ from those offered. As a result, consumers may not have full or accurate information on the product features that matter to them when choosing a credit card, which naturally inhibits effective comparison of offers. [...] the representative APR that some consumers may use as a basis for informing their choice of credit card has a number of shortcomings. Although it is a good indication of potential cost for larger-sum fixed-term loans, it has significant limitations. For example, it is not such a good indicator of cost for other types of credit, in particular credit cards where some consumers repay their balance in full each month. The outcome could be that consumers relying solely or largely on representative APR to inform their choice of credit card may choose a card that does not best meet their needs [...] We will explore whether consumers have the relevant information on key product features at the outset and the extent to which they consider the terms and conditions to be unclear.

The purpose of this review

- 2.2 The purpose of this review was to understand the consumer journey; from the very early stages of thinking about which card provider to opt for, to the final stages of signing a Credit Agreement. There are a number of credit card providers in the market all offering a range of cards. We considered whether consumers are provided with sufficient information before the point at which they make their decision - so as to allow them to make an informed decision about which card they wish to take out. We also reviewed what this information looks like, and whether it is easy for consumers to understand so that they can compare products in the market.
- 2.3 Consumers will be presented with information at various stages of this journey. At the outset, consumers might look for information to understand what a credit card is and how it works. Once consumers are satisfied with the level of information they have obtained, they might then want to shop around for the best deal, using websites and pre-contractual information to help inform their view; so we looked at whether contractual information reflects what consumers think they have signed up to. We considered how easy it was for consumers to understand the contractual information provided to them at the various stages of the process.
- 2.4 This report looks to answer some of these questions.

Next steps

- 2.5 Although this report does not provide a discussion on rules and regulations and is a factual summary of findings firms should still ensure that the information they present to their customers is in line with the relevant rules and regulations that apply to the consumer contracts they issue. These being, but not limited to, the Consumer Credit Act 1974, Consumer Credit (Agreements) Regulations 2010 (CCA) and the Consumer Rights Act 2015 (or the Unfair Terms in Consumer Contracts Regulations 1999 for contracts entered into before 1 October 2015) with regard to contractual information and the Consumer Credit sourcebook (CONC), in particular with respect to adequate explanations of credit agreements in CONC 4.2³ and the Consumer Credit (Disclosure of Information) Regulations 2010 (CCD), with respect to pre-contractual information.
- 2.6 Furthermore, firms should ensure that the information they prepare is clear, fair and not misleading as required by CONC 3.3.1R(1). Consumers should be given the opportunity to read relevant information and ask any questions they may have. Information which clearly sets out how customers can contact the firm to ask questions and obtain further information are requirements set out in CONC 4.2.5R(1)(c) and (d).

Our approach

Scope of our review

- 2.7 In our review of a sample of terms and conditions of 14 credit card products, we looked at four categories of cards in particular:
- 0 % Balance transfers
 - Low and grow⁴
 - Standard interest rate⁵
 - Rewards
- 2.8 As part of our review, we considered the following:

Pre-contractual information

- Standard European Consumer Credit Information (SECCI)⁶
- Adequate explanations⁷

Websites⁸

Contractual information

- Credit Agreement and terms and conditions⁹

³ Noting in particular CONC 4.2.15R which sets out adequate explanations required for credit token agreements and the guidance in CONC 4.2.17G onwards about marketing by distance or electronic means.

⁴ These are credit builder cards aimed at subprime borrowers or those with little or no credit history. These start with a low limit that is gradually raised as the borrower proves their credit-worthiness.

⁵ These are cards where there typically is a cost to the borrowing of credit.

⁶ As per the template in the Consumer Credit (Disclosure of Information) Regulations 2010.

⁷ See CONC 4: <https://fshandbook.info/FS/html/FCA/CONC/4>

⁸ For the purposes of this review, we reviewed websites insofar as they include pre-contractual or contractual information.

⁹ As per the Consumer Credit (Agreements) Regulations 2010.

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- 2.9 We looked at the information provided to consumers to understand the consumer journey, particularly to ascertain whether a consumer is likely to understand the information they are presented with when they are shopping around and whether they in fact end up getting the deal they thought they would.
- 2.10 Although we have not undertaken a compliance or legal review of terms and conditions we have occasionally highlighted certain findings where we considered a reminder of the relevant legal requirement(s) could be of benefit to firms.

Structure of our review

- 2.11 We focused on five broad questions in our review, split between pre-contractual information, contractual information, and a comparison between the two:
- 1 a) What type of credit card information is presented to the customer in the pre-contractual documentation? What type of information is not presented?
 - b) Is it easy for the customer to navigate to key features of a product via the website?
 - 2) How are the terms presented? Do terms seem particularly complex?
 - 3) Were there any notable differences in information contained with the pre-contractual and contractual information?
- 2.12 This report provides a discussion on our findings in respect of the four categories of cards reviewed. General findings are followed by a discussion of findings specific to each category of card.

3 General Findings

- 3.1 Across the card ranges, we found that pre-contractual information generally covered key features (such as rates, APR and charges). However, in contrast we often found that pre-contractual information and explanations, as required by the Consumer Credit (Disclosure of Information) Regulations 2010 and CONC 4.2, did not always adequately highlight the limitations of promotions (rates), of benefits (such as cashback) or that the use of the card may result in unexpected costs (for example gambling transactions (in the **low and grow and 0% balance transfer** range) are treated as cash withdrawals).
- 3.2 Another significant recurring issue we found across the card ranges was the use of inappropriately small fonts, which at times were illegible. Use of small fonts reduces a consumer's ability to engage with information presented to them and hinders their ability to appreciate their rights and obligations.¹⁰
- 3.3 We did not find any material inconsistencies between pre-contractual and contractual information.
- 3.4 We also found the following for not all, but for more than one card range:
- Websites: across the **0% balance transfer and reward** range, we found that some providers' key features or documentation could only be found after a consumer had applied for a card.
 - Terms and conditions: across the **0% balance transfer** and **standard interest rate** range, we identified the use of exclusions of liability by providers.

¹⁰ The requirement of CONC 3.3.2R (2) is that 'A firm must ensure that a communication or a financial promotion...is easily legible'. Also to note Regulation 8 of the Consumer Credit (Disclosure of Information) Regulations 2010.

4 0% Balance transfers

Pre-contractual information and websites

What type of credit card information is presented to the customer in the pre-contractual documentation? What type of information is not presented?

- 4.1 Pre-contractual information helps put the customer in a position to be able to assess whether the card meets their needs and financial situation. We found that key features, such as fees, charges and interest rates (as per the requirements of the SECCI), were clearly set out in the sample of SECCIs reviewed, in a way which would enable customers to assess whether the product is suitable for them. Many firms also clearly presented the consequences of default.
- 4.2 We found examples of good explanations of important information such as where information was not included in the SECCI due to the requirements of the CCD but was highlighted instead in the Adequate Explanation required under CONC 4.2. One such example was where a provider's Adequate Explanation stated that other accounts a customer had with the provider may be used to recover outstanding payment.
- 4.3 Features of the card which might operate in a way as to have an adverse consequence on a consumer were identified and presented clearly in the SECCI and highlighted appropriately within the Adequate Explanations. The following is an example of what we found in this context: 'failure to make payment may lead to impaired credit rating and prevent a customer from accessing credit or increase the cost of credit'.

Is it easy for the customer to navigate to key features via the website?

- 4.4 We found that rates (headline, introductory or promotional) as well as charges and fees were presented in different ways. Some card providers presented this information clearly in a large, comprehensive summary box, whilst others provided a link to their SECCI and terms and conditions. However, we did find at least one example where some of this information could only be found when actively applying for a card. It is worth noting that the provision of pre-contractual information to the consumer 'in good time before the agreement is made' as per Regulation 3(2) of the Consumer Credit (Disclosure of Information) Regulations 2010 would enable the consumer to take an informed decision on whether or not to conclude a credit agreement.

Contracts

How are the terms presented? Do any terms seem particularly complex?

- 4.5 The language firms used appeared to be plain and simple, however, the font used in some cases was inappropriately small (see paragraph 3.2).¹¹

¹¹ To note the requirement of CONC 3.3.2R(2) and Regulation 8 of the Disclosure Regulations.

5 Low and grow

Pre-contractual information and websites

What type of credit card information is presented to the customer in the pre- contractual documentation? What type of information is not presented?

- 5.1 Information which is clearly presented will enable firms' customers to decide whether the card is suitable for them, and hence understand the key features of the contract they enter into. This includes explaining terms that may not be easily understood or potentially open to interpretation. We found some evidence of terms such as 'arrears', 'cash advance' and 'money transfer' where further explanation might be of benefit to the consumer.

Is it easy for the customer to navigate to key features via the website?

- 5.2 We found that in general clear statements were provided about the features which may make the credit provided under the agreement unsuitable for particular types of use.¹² For example, we found that firms generally explained that these cards are targeted at sub-prime borrowers or those with little or no credit history, and who may wish to build up their credit.

Contracts

How are the terms presented? Do any terms seem particularly complex?

- 5.3 We found one example of a default charge where further explanation of the term might be of benefit to the consumer.

¹² As per our rules under CONC 4.2.5R.

6 Standard interest rate

Pre-contractual information and websites

What type of credit card information is presented to the customer in the pre- contractual documentation? What type of information is not presented?

- 6.1 There was some evidence of interest being applied to certain default charges, which was not disclosed in the SECCI documentation. We remind firms of the requirement to disclose this information as per the Consumer Credit (Disclosure of Information) Regulations 2010, (see: regulation 3(4)(o)), as failure to include this information may result in the consumer being unable to ascertain that default charges charged may in fact be higher due to the interest applied¹³ and furthermore could also give rise to an unenforceable agreement under section 55(2) of the Consumer Credit Act 1974.
- 6.2 We found one instance of a firm using an easy to read flowchart in their adequate explanations, which a consumer may find useful.

Is it easy for the customer to navigate to key features via the website?

- 6.3 We found that the amount of information available on websites tended to vary from firm to firm. In some cases, less immediately available information required more navigation.

Contracts

How are the terms presented? Do terms seem particularly complex?

- 6.4 Some terms were not sufficiently explained. More clarification of these terms would better satisfy the requirement of CONC 3.3 which requires that a firm must communicate information to consumers in a way which clear, fair and not misleading.

¹³ To note, section 86F of the Consumer Credit Act 1974 limits the charging of interest on default fees.

7 Rewards cards

Pre-contractual information and websites

What type of credit card information is presented to the customer in the pre-contractual documentation? What type of information is not presented?

- 7.1 We found one instance of a 'dormancy' fee not being included in the Adequate Explanation. Where the Adequate Explanation does not clearly explain the relevant areas of the SECCI where such detail can be found, a customer might not become aware of the various charges.
- 7.2 We generally found that the consequences of failing to make payments as they fall due were included in the SECCI and Adequate Explanations.

Is it easy for the customer to navigate to key features via the website?

- 7.3 Key features were generally easy to find. Some websites helpfully included relevant pre-contractual documentation on the main page (where there is no requirement to do so). With others we found that all key features could only be accessed by actively applying for a card and clicking on the 'apply now' button. Consumers may not click on the 'apply now' button owing to the belief that they might accidentally apply for a card that is not suited to them. By not having pre-contractual information readily available on websites it may compromise consumers' ability to 'shop around' and find the best deal. The provision of pre-contractual information to the consumer 'in good time before the agreement is made' as per Regulation 3(2) of the Consumer Credit (Disclosure of Information) Regulations 2010 would enable the consumer to take a more informed decision on whether to conclude a credit agreement.

Contracts

How are the terms presented? Do terms seem particularly complex?

- 7.4 We found examples of rewards cards that were tied to various terms and conditions. For example, for one card there may be one set of generic terms and conditions and another set for the rewards 'programme'. Some additional benefits such as travel insurance may be found in another set of terms and conditions altogether.
- 7.5 One firm used a booklet containing terms and conditions and Credit Agreements for more than one card which made it very difficult to understand which information was relevant to each card.

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