



Consumer Credit Act Reform Consultation,  
Personal Finances and Funds Team,  
HM Treasury,  
1 Horse Guards Road,  
London SW1A 2HQ

By email

6 March 2023

Dear Sir/Madam,

### **FCA Practitioner Panel response to Reforming the Consumer Credit Act 1974 Consultation**

The Panel strongly supports the objectives and principles of the reform of the Consumer Credit Act (CCA) and would support that the same principles are applied by the FCA in the approach to any powers transferred. The reform should be forward thinking and ambitious while also ensuring that care is taken to align changes with the Future Regulatory Framework and the Consumer Duty.

There is very strong rationale for the movement of information requirement provisions to the FCA rules, and a real opportunity to refine and align the CCA provisions with the FCA rules so that consumers are provided with clear information, at the appropriate level and at the right time, to enable them to make informed decisions. The scale of this transfer exercise cannot be underestimated if it is to produce the benefit envisaged from modernising the CCA. It will be vital to avoid a 'cut and paste' approach, as this would not only undermine the potential benefits but also risk making the overall situation worse. The objective should be to simplify and align the provisions to ensure the best part of them are retained while removing any duplication and unnecessary complication. Given the historic nature of the CCA and the volume of material, this is going to take considerable time and care, recognising that it may also require modifying some of the FCA's existing rules.

The approach to updating and realigning rights and protections within the CCA, especially Section 75, presents particular challenge. There have been material developments with respect to consumer protection since the rights and protections were put in place which has created a pressing incentive to modernise provisions. This is a key area where proportionality needs to be applied. While there will be apprehension about potentially taking something away from consumers, and heightened awareness of the importance of consumer protection in the context of the current cost of living crisis, the protections afforded within the CCA are so wide and unwieldy as to be ineffective or disproportionate, potentially creating barriers to UK competitiveness and growth. Moreover, the protection afforded to consumers could be strengthened by developing a more proportionate approach and applying it more widely beyond the credit market to markets such as payments, including debit cards, open banking and "wallets" to ensure consistency. In seeking to equalise the approach across payment types it will be important to focus on modernising the rules rather than taking a 'lift and shift' of the current approach. This work also needs to anticipate the development of a Central Bank Digital Currency to ensure that the revisions are truly future-proofed.

There is a related, but separate, need to review the various sanctions embedded within the CCA. Many are outdated and disproportionate, acting as a disincentive to new market entrants

and potentially obstructing the smooth integration and progression of credit markets and credit/payment markets. The focus of the new Consumer Duty on customer outcomes more than adequately addresses the intentions embedded within many of the CCA's sanctions. The duty could easily be leveraged to address them all, as a focus on poor customer outcomes and harm should be the overriding focus of any sanctions. Furthermore, the introduction of SMCR has placed the onus on firms to ensure senior manager responsibilities and expectations of conduct are clear.

One specific type of sanction within the CCA that requires careful consideration is the application of automatic unenforceability. There are certainly circumstances wherein contracts should become unenforceable, and that should apply more broadly than simply to credit contracts. However, the new Consumer Duty seems to provide the FCA with the freedom and opportunity to judge both when such a sanction is appropriate and how to apply it in a proportionate way.

Finally, in recognising the importance and value of this reform, it is important to recognise the exercise is going to involve an enormous amount of work and considered thought in order to achieve the benefits envisioned. Given the volume, nature and priority of work currently underway, work to update the CCA will require considered iteration to ensure that the new design is appropriate, that provisions can be effectively implemented (testing for unintended consequences) and to ensure an appropriate period of embedment is allowed.

We would be happy to discuss any of these points further and look forward to supporting the FCA with this exciting work.

Yours faithfully,

[signed]

Matt Hammerstein  
Deputy Chair, FCA Practitioner Panel