

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,

**SMALLER BUSINESS PRACTITIONER PANEL RESPONSE TO CONSULTATION ON REFORM OF THE CONSUMER CREDIT ACT 1974**

The Panel strongly supports the objectives of the reform of the Consumer Credit Act (CCA) and welcomes the opportunity to respond. We have highlighted a number of general observations.

Firstly, the proposed principles provide a sensible framework to undertake a re-shaping of the current CCA, but there should be particular focus on ensuring changes to the rules are proportionate and deliverable in the context of the limited resource constraints of smaller businesses and the volume of change the financial services industry is currently managing, including the FRF and the implementation of the Consumer Duty.

The existing provisions in the CCA have created confusion for consumers and led to regulatory arbitrage and 'ambulance chasing' by CMCs. We recommend looking at the unfair relationship provisions and Section 75 in particular to address these issues, noting that the existing regulatory framework under FOS, FSMA and the Consumer Duty, as well as provisions in the Consumer Rights Act, already provide appropriate protections for consumers.

The reform should seek to address general barriers to consumer lending irrespective of purpose. Making adjustments to support achieving the government's Net-Zero targets is only one component of an opportunity to promote wider growth. There is also a need to take a consistent approach to address historic discrepancies across the sectors.

There is a real opportunity to streamline disclosure requirements and standardise the format of pre-contractual content, without being overly prescriptive, to enable consumers to more readily identify and easily digest key information and compare like for like and reduce unnecessary bureaucracy from a business perspective. This should also ensure there is appropriate consideration of vulnerable consumers and align with changes in technology.

We have also provided specific comments on a number of questions in the consultation.

**Definitions (Questions 3, 4 and 5)**

Providing clarity on key definitions, including having simple, consumer-friendly, definitions for terms such as creditor and debtor, as well as key definitions for 'enforceable' and the right to collect interest, is needed to provide transparency and support businesses and consumers to have an aligned understanding of agreements. Depending on Case Law to provide these definitions does not support certainty or consistency. In our view it would be appropriate for the FCA to take the lead in setting out an interpretation of these terms, which should then be aligned with the CCA provisions.

Consideration should also be given to the impact of having different definitions across regulatory rules particularly in the context of business lending where, for example, there is a concept of a "micro enterprise" in DISP and in the Payment Services Regulations, which then creates anomalies in the rights afforded to different "business" customers (depending upon whether they borrow from a regulated or unregulated lender or whether their credit card limit falls under or over the £25,000 threshold).

Regarding the business lending scope of the CCA, our observation is that lending to businesses under £25,000 is often avoided to avoid coming into the scope of CCA regulation. It needs to be recognized that if the scope were to be widened it is likely there would be a corresponding reduction in lending to SMEs, and vice versa.

### **Information requirements (Questions 6, 7, 8, 9 and 25)**

It is sensible that most information requirements are replaced by FCA rules to simplify and update the provisions.

Customers need to be provided with the right information at the right time, and in an easily digestible format, to enable them to make informed decisions. In our view, it would be helpful, and support the objectives of the Consumer Duty, to have some form of standardised disclosures as there would be inefficiency and a lack of consistency if large numbers of consumer credit firms were left to create their own documentation.

In our view, the requirements should be set out in the FCA rule book rather than in statute, and responsibility should appropriately sit with FCA supervisors to address any significant inconsistencies or lack of adherence. We note that currently the format of pre and post contractual forms are often long and unwieldy, meaning that key information may not be read by the consumer. To the extent that there is some form of common layout or template, there is opportunity to streamline what is presented to aid consumer engagement and facilitate the ability to compare like for like.

The requirements should not be overly prescriptive but should instead, focus on ensuring consumers are provided with a summary of the key information they need to know before committing to a contract. A summary box/ bullet point style format would perhaps be more appropriate in the context of the increasing use of smart phones and other devices increasingly being used to take out credit, and aid understanding by those with varied financial literacy and numeracy levels.

### **Rights and protections (Questions 10, 12, 13, 14, 15, 16 and 17)**

A primary observation is that Section 75: Connected Lender Liability has overreached its original purpose and created unintended consequences. It places disproportionate cost on firms and creates a discrepancy whereby consumers making purchases using credit have greater protections in respect of the goods/services they've been supplied with/purchased than those consumers who pay in cash. Furthermore, the Consumer Rights Act already provides significant protections for consumers in respect of any misrepresentations and/or issues in the supply of goods and services. If it is felt that further protections for consumers are needed, they should be agnostic of how the customer pays and should be consistently and proportionately set out within this legislation, rather than the CCA.

In our view, the Consumer Duty provides an appropriate level of comprehensive rights and protections for the consumer which effectively makes inclusion of consumer protection provisions in the CCA unnecessary. However, if it is felt that the Consumer Duty (and existing consumer protection legislation) does not contain sufficient rights and protections, then we would support incorporating appropriate rights and protections in the FCA's FSMA rule-making power. This would enable the regulator to take proactive action rather than the

onus being on the consumer to initiate litigation and enable supervisors to take a balanced response applying a consistent approach.

We do not see value in including time orders in the FCA rules as they have effectively been superseded by current guidance on forbearance.

The voluntary termination right is now often misused. While intended to provide an exit for consumers who find themselves in financial distress and who have fulfilled the requirement of repayment of at least 50% of the financial package, it is often used in times of negative equity by the motor trade to hand the vehicle back to the finance provider when the customer is part-exchanging and taking a new finance agreement. It thereby contributes to the overall cost of credit as it represents a risk to lenders with this cost ultimately being passed onto all customers (whether or not they choose to exercise the voluntary termination right).

We strongly advocate not including the unfair relationship provisions in legislation, as the FSMA regime and FOS redress provide sufficient protections for consumers. The existing provisions in the CCA have created confusion for consumers and led to regulatory arbitrage and 'ambulance chasing' by CMCs, unfairly impacting on smaller businesses. This is a live issue in the motor finance market today and is causing increasing costs, particularly for smaller firms and could result in lenders withdrawing from this market.

### **Sanctions (Questions 18, 19, 20, 21, 22, 23 and 24)**

We would not support the proposal to enable unenforceability provisions to be applied to breaches of FCA rules. In our view enforceability should be addressed by proportionate, principle-based, regulation rather than contained in legislation. The FCA already has broad powers to address enforceability issues and require redress to customers, and this is reinforced by the consumer duty.

Sanctions relevant to specific breaches of CCA rules should not be needed if relevant provisions are brought into the FCA rule book. Current sanctions are often disproportionately applied to administrative errors, where there is no real consumer harm. It is appropriate that the FCA is given the remit to levy sanctions in a proportionate and considered way.

We do not see the CCA provisions that give rise to a criminal offence as having value. The provisions are now outdated as they have effectively been superseded by the Senior Managers and Certification Regime.

Regarding outdated provisions, review of Section 75 should be a priority. Further, Section 56 of the Act, which creates a relationship of 'deemed agency' where dealing with 'antecedent negotiations' take place, also requires consideration and/or refinement – particularly section 56(b) and (c) as, whilst the lender should be responsible for representations made about the credit agreement itself, consumers already have protections against any misrepresentations made in relation to the goods (or services) to be sold or supplied under existing consumer protection legislation (such as the Consumer Rights Act and the Unfair Trading Regulations).

### **Consumer hire (Question 23)**

It would be appropriate to increase the standards of conduct for consumer hire agreements, to make them comparable to those for consumer credit. This is needed to address issues around inappropriate promotion of Personal Contract Hire as an option for consumers and support more informed consumer choices geared to what is suitable for them and they can afford.

**Small agreements (Question 24)**

We would support the review of current exemptions outlined in section 17 from specific elements of the CCA and CONC to ensure there is consistent regulation of all small agreements alongside BNPL.

**Financial inclusion (Question 26)**

In our view protections of consumers' mental health and wellbeing are well covered under existing regulation, including the responsibility to recognise vulnerable customers as set out in the Consumer Duty.

We would be happy to discuss any of these points further.

Yours sincerely,

[signed]

Andy Mielczarek  
*Chair, FCA Smaller Business Practitioner Panel*