THE FCA SMALLER BUSINESS

PRACTITIONER PANEL'S

RESPONSE TO FCA CONSULTATION PAPER 13/10

on DETAILED PROPOSALS FOR THE FCA REGIME FOR CONSUMER CREDIT

4 December 2013

1. Introduction

The FCA Smaller Business Practitioner Panel (the 'Panel') has been pleased to discuss with the FCA the transfer of the consumer credit regime from the OFT to the FCA, and the creation of new regulatory requirements for firms undertaking consumer credit activities. Our Panel represents a number of businesses from different financial services sectors, which hold consumer credit licences as part of their business.

We have provided our detailed comments below on the new consumer credit regime and in response to the specific questions in consultation 13/10.

Executive Summary:

In summary:

- The Panel is broadly supportive of the set of proposals within the consultation paper, as well as the general move of consumer credit regulation from the OFT to FCA;
- We note that the level of risk in different types of activities vary, but that existing regulated firms will contribute significantly to the cost of raising standards in unrelated sectors;
- The FCA should ensure that its senior management gives proportionate time to consider the risks in consumer credit and other existing responsibility areas;
- The new regime should be aligned as far as possible with existing FCA policies and processes to prevent consumer credit feeling like an entirely separate regime;
- The FCA should consider how its rules fit with the Consumer Credit Act (e.g., in relation to mortgages), and work with the Government on necessary changes to align requirements and approaches;
- We support FCA requests for further data from firms if necessary, but believe the FCA should consider where existing firms might already be providing sufficient information;
- The regime for high-cost short-term credit should be proportionate to the risks to avoid withdrawal from the market of services;
- We do not believe setting a price-cap will be effective at protecting consumers but that the proposed measures (limiting roll-overs and CPAs) should help achieve this goal;
- The definition of high-cost short-term credit should be flexible but provide clarity to all parties about what is in scope and what is carved out. This should be reconsidered from what is proposed;
- Reporting by those providing second-charge property loans should be aligned across existing and new FCA regulated firms;
- No further changes to the second-charge regime should be introduced until the FCA implements the EU Mortgage Credit Directive.

2. Panel response:

The Panel is supportive of the developing approach outlined for the transfer of consumer credit regulation from the OFT to the FCA. In general, we feel regulation by the FCA will provide much needed greater scrutiny to those firms which currently are subject to a licensing regime rather than a regulatory regime. The proposals appear to be, in the main, well thought out and reasonable for tackling areas where certain firms' actions are likely to be causing the most consumer detriment currently.

In respect of those firms who are already regulated by the FCA, but hold consumer credit licences ancillary to their main businesses, the Panel continues to have concern about what this new responsibility for the FCA will mean for them. We have been comforted that the FCA believes its current plans will allow phased transfer of consumer credit, without impact on the regulation of other activities or types of firm. We are also pleased that the additional cost of meeting consumer credit responsibilities (including planning and implementation) will be borne by the consumer credit sector, rather than spreading costs across all firms. However, we are concerned that where current FCA firms have OFT licences, these institutions will be contributing significant amounts of their fee payments to regulate and raise standards of other businesses which are potentially not well run from a conduct perspective. These current FCA firms, many of which are small, are well run and will face heavy additional costs to substantially raise standards in unrelated sectors.

The FCA will have to continually assess this sector but ensure senior management time is spread sufficiently across all areas of activity to provide that the large task of implementing the new regime does not result in missed risks or consumer detriment in other areas.

With the FCA implementing a regime based on the Consumer Credit Act, and the existing regime deriving from FSMA, there is a belief among many that the two regimes will feel separated. For businesses already subject to FCA regulation, many believe that the regime will feel like dual-regulation unless the FCA can fully merge its rules and approach across the regimes. Part of the difference is that the FCA appears to be approaching the task as creation of a regime for a whole industry, rather than as a series of additional permissions. An example of this is that existing firms are being asked to consider a range of new reporting obligations and systems and control requirements. Existing regulated firms already have developed systems which allow them to meet FCA standards, and report a wide range of data about their business to the FCA. Additional requirements place burdens, particularly on smaller firms. Consideration should be given to where, on an assessment of risk, further requirements or data are actually needed. Where they are, we would welcome existing reporting forms on GABRIEL being evolved to encompass the new requirements, rather than creating new forms and systems.

In addition, certain provisions of the Consumer Credit Act, such as the unenforceability provisions where details of the credit contract are missing or incorrect should be considered by the FCA. We are concerned that the Act does not align detriment with redress, which the FCA is required to do in other areas.

Although statutory in nature, provisions such as this should be considered by the FCA in due course and discussed with the Government where necessary to achieve a fair outcome for all parties.

The Consumer Credit Act also has some long-standing cross-overs with the FCA's rules, which we believe the FCA should now take the opportunity to consider. For example, the Act and FCA MCOB rules both require specific 'wealth warnings', depending on whether the product in question is a FCA-regulated mortgage or a secured loan under the Act – in several circumstances, both definitions apply. These duplications should be resolved now the FCA has responsibility for enforcing the Act.

The Panel's response to some of the specific questions in the consultation are provided below.

The FCA regime for consumer credit

Q1: Do you have any comments on the way our threshold conditions are being applied to consumer credit firms and/or the updates to our Handbook rules?

None.

Q2: Do you agree with the updates to our draft Handbook rules for approved persons for consumer credit firms?

No comments provided.

Q3: Do you have any comments on the updates to our draft rules regarding appointed representatives of consumer credit firms?

None.

Q4: Do you have any comments on the criteria that we are proposing a person would have to fulfil to be a self-employed agent of a principal firm (as set out in Appendix 2)?

None.

Q5: Do you have any comments on our proposed regulatory reporting regime?

We understand the need for the FCA to impose new reporting requirements on consumer credit firms to gather information on risks about firms, their activities and potential consumer detriment. The Panel welcomes the fact that the FCA will undertake not to cause undue burden or disruption to the industry by imposing reporting requirements in a proportionate manner, related to the size of business and risk to consumers. The use of existing systems (GABRIEL) for collection is also supported, as a proven system, which existing FCA regulated firms are already familiar with.

For existing firms, we would also welcome continued consideration of whether the FCA already is asking for the data elsewhere or holds the data separately. Unnecessary reporting requirements place particular burden on small firms, and the Panel has been particularly supportive of the FCA data strategy published in September, which aims to control and minimise reporting burden.

High-cost short-term lending

The Panel generally agrees that the proposals for high-cost short-term lending are reasonable. For any proposals made, we believe it is important for the FCA to keep in mind that proposals should be proportionate to the risk being tackled and that consumers are ultimately responsibility for the debt they choose to take on. We also caution against actions which place a disproportionate regulatory burden on these firms, such that they withdraw substantially from the market. Given consumer demand for the products being offered, they are likely to suffer greater detriment if these legal firms withdraw and demand is instead satisfied only by unauthorised and illegal credit providers.

Q6: Do you agree with our proposals to collect product sales data on high-cost short-term lending and home collected credit?

No comments provided.

Q7: Do you have any comments on how we propose to carry across CCA and OFT standards, in particular in the areas highlighted above?

None.

Q8: Do you have any comments on our proposed approach to financial promotions?

None.

Q9: Do you agree with the definition of a high-cost short-term credit provider as set out at the start of this chapter?

The Panel is concerned that the definition of high-cost short-term credit may not be sufficiently flexible and may be misleading. While we welcome attempts to carve the definition widely to avoid certain firms gaming the protection given, we feel setting time period and interest rate constraints, may still provide opportunities for certain firms. We would welcome consideration of other ways of defining the scope of application to ensure it captures any credit activities where (for example) it would be sensible to notify consumers about the risk of over indebtedness, availability of debt advice and provide protections from escalating situations.

In addition, attempting to carve out certain products, with various degrees of similarity to high-cost short-term credit, risks misleading firms and consumers on the scope and riskiness of those products, plus provides further opportunities for avoidance. A clearer solution would be to simply carve out any ‘credit agreements requiring customers to provide any form of additional security’.

Q10: Do you have any comments on limiting rollover to two attempts?

None.

Q11: Do you have any comments on whether one rollover is a more appropriate cap?

None.

Q12: Do you have any comments on our proposal to introduce a limit of two unsuccessful attempts on the use of CPAs to pay off a loan?

None.

Q13: Do you have any comments on our proposal to ban the use of CPAs to take part payments?

None.

Q14: Do you have any comments on our risk warning?

None.

Q15: Do you have any comments on our proposals to require high-cost short-term lenders to provide information on free debt advice before the point of rollover?

None.

Q16: Do you have any comments on the effectiveness of price capping?

In general, we believe that capping of prices and fees is unlikely to be effective. If the price-cap is set too high, the potential consumer detriment will not be addressed. If the price-cap is set too low, the economics of the product will no longer be viable and it will not be provided in the market. Finding a suitable level, that balances these two concerns, is extremely difficult and is better addressed by the Government as a matter of social policy. We feel that addressing the use of roll-overs, CPAs, as well as possible provisions on the speed of accessing credit, will more effectively help to protect consumers.

Debt-management firms

Q17: Do you agree with our proposals on how to calculate our prudential requirement for debt management firms and some not-for-profit debt advice bodies? If not, what amendments would you suggest, and why?

No comments provided.

Q18: Do you agree with our proposal to apply a transitional approach to prudential standards for debt management firms and some not-for-profit debt advice bodies?

No comments provided.

Q19: Do you have any comments on our draft guidance on the debt counselling activity and our draft rules covering the provision of debt advice?

No comments provided.

Q20: Do you have any comments on the rules that we propose to apply to peer-to peer lending platforms to protect borrowers?

None.

Q21: Do you agree with our proposals for debt management firms and not-for-profit debt advice bodies that hold client money? If not, which aspects of the regime do you disagree with and why?

No comments provided.

Q22: Do you agree with our proposed implementation timetable? If not, please give reasons.

No comments provided.

Second Charge Loans

Q23: Do you agree with our suggested amendments to the reporting requirements for second charge loans?

We agree with the approach to keep reporting requirements on second charge loans the same for those already reporting these to the FCA due to the fact that the firms provide first charge mortgages. To ensure a level-playing field, we believe the FCA should give further consideration to whether those providing second-charge loans could report as current firms are, given that systems already exist at the FCA for collecting the data.

We welcome that the FCA is seeking not to make further changes until it implements the Mortgage Credit Directive, as further changes would be unnecessarily burdensome. However, if the FCA sees a need to gather the data from existing firms, waiting until 2016 when the EU Directive is implemented is likely to be an unjustified delay.

FOS jurisdiction

Q24: Do you agree with our proposal to allow all microenterprises to complain to the ombudsman service?

No comments provided.

Q25: Do you agree with our proposal to include not-for-profit bodies providing debt advice in the Compulsory Jurisdiction?

No comments provided.

Q26: Do you agree with our proposals on recording, reporting and publishing complaints?

No comments provided.

<u>Cost-Benefit Analysis</u>

Q27: Do you agree with the costs and benefits identified?

No comments provided.

Q28: Do you agree with our assessment of the impacts of our proposals on the protected groups? Are there any others we should consider?

No comments provided.