

Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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30 April 2009

Dear Mr Hosier,

Second charge lending – OFT guidance for brokers and lenders

The Financial Services Consumer Panel is pleased to be able to comment on the Consultation Paper regarding Second charge Lending.

Overall the Panel believes that the Guidance should be more explicit in what it expects from firms. The draft general principles and guidelines are helpful but we would prefer to see a less high level approach that sets down in more prescriptive detail how the OFT expects brokers and lenders to act. The powerful protections afforded to consumers under the Consumer Credit Act are too often not identified or acted on by consumers and their advisers. We would encourage the OFT to use guidance to encourage and require firms to have full regard to the consumer protection provisions of the CCA when administering second charge loans.

We also think that the OFT guidelines would benefit from close examination and consistency with the guidance contained with the FSA MCOB rules. It would be helpful for consumers, advisers, and perhaps the industry if regulatory guidance was consistent for both first and second charge loans. Whilst we appreciate that there are two specific regulatory regimes, there are some examples of MCOB guidance and possibly even some rules that could helpfully be transferred across to OFT guidance. For example, on irresponsible lending the OFT guidance states that loans should be subjected to a proper assessment of the borrowers ability to repay and that borrowers should not be put under undue pressure to enter into an agreement. FSA guidance goes further to state that lenders should also consider future income and that a lender should also maintain records showing the checks it made on the borrower's ability to repay the loan.

Such additional guidance would be an additional source of protection for consumers. We should remember that with changed economic circumstances placing financial strain on households, people may be enticed to apply for a second charge mortgage

as a financial lifeline? We need to be sure that industry does not intentionally or unintentionally exploit consumers in vulnerable circumstances.

Our detailed comments on specific questions follow. We hope that these comments are helpful.

Yours sincerely,

A handwritten signature in black ink that reads "Adam Phillips". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Adam Phillips
Acting Chairman
Financial Services Consumer Panel

Chapter 2

Q3. Do the draft guidelines on general principles have any significant omissions?

The general principles should include the requirement to Treat Customers Fairly. They should also include the requirement that brokers and lenders consider whether a second charge loan is the best option for the borrower given the borrower's overall financial situation.

We also believe that the OFT should ensure that the principles are known to consumers. We see this as beyond the responsibility of brokers and lenders and could be something which the OFT could explore with the FSA as part of the general drive to improve financial capability.

Chapter 3.

Q.7 Are there any significant omissions?

Para 3.11 should be firmer in respect of debt consolidation. Where borrowers are seeking to consolidate debt, brokers and salespersons should be required to state that there are alternatives to using a secured loan and advise that the borrower takes advice from an independent debt advice agency before taking on a secured loan. Alternatively/in addition, the OFT should require that written information explaining the advantages and disadvantages of using a secured loan to consolidate debt is provided at the pre-contract stage.

Sections 3.8 – 3.11 could be strengthened to tackle high pressure selling and incentives. It could, for instance, include detail on penalties that will be given if, for example, advertising material was misleading? We believe that transparency can play a role and would encourage the OFT to think about naming and shaming. We also would encourage thought to be given to 'naming and faming' to encourage good practice.

Paragraph 5.3 should include specific reference to the 'time order' procedure and suggest that lenders should consider whether a reduced payment arrangement on 'time order' principles is indicated.

More generally, we wonder whether guidance is appropriate for other areas of consumer credit act regulation where there are regular reports of concerns amongst consumer advisers. For example, the obligations of second charge lenders under section 75 of the CCA when funding linked purchases, and the OFT expectations of the new provisions under the new unfair relationships test when considering high interest rate secured loans.

Chapter 4

Q.10. Are there any substantive aspects of the draft guidelines on contract issues with which you disagree?

It seems strange that some parts of the 'guidance' state that firms must comply with the CCA rules. Since such compliance is not optional, we query whether the message should be stronger if the OFT is already aware of areas of non compliance

and should set down the penalties for non compliance and the OFT intention to monitor and enforce these areas.

Section 4.2 implies that CABs and other independent advice agencies have capacity to meet increased demand – we question whether this is feasible given that CAB waiting lists are increasing. We suggest that the OFT consider whether consumer advice might be picked up as part of Money Guidance and/or whether there should be specific information on second loans provided by Consumer Direct and Moneymadeclear and that firms should also refer consumers to these sources of information.

Chapter 5

Q14. Are there any substantive aspects of the draft guidelines on post-contract issues with which you disagree?

Para 5.8 suggests that there may be circumstances where lenders of their agents may refuse to deal with authorised third parties such as CAB, for example, where the lender or agent thinks that the repayment proposal is not 'reasonable'. Given that the CCA documentation requires lenders to suggest that borrowers seek advice from a CAB, Trading standards, etc, we cannot see how any lender could refuse to deal with these third parties. We think that the OFT should reconsider this paragraph. Consumers, particularly vulnerable customers must not be hindered in asking for help from reputable sources.

Chapter 7

Q.23 Are there any significant omissions?

Many second charge lenders will also be regulated by the FSA in respect of first charge lending, insurance or other matters. We suggest that as part of the OFT/FSA action plan to deliver better regulatory outcomes, the OFT should confirm that where it identifies non-compliance with the law and/or OFT guidance, it will also inform the FSA of the non-compliance.