

Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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Our ref: DTI -CCD/KW

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Dear Iain

DTI Consultation – proposals for an EC Consumer Credit Directive

The Panel is pleased to have a further opportunity to comment on the DTI proposals relating to the latest draft of the Credit for Consumers Directive. I am very grateful for the extension to the deadline which you agreed – this has helped us tremendously.

In its response to the DTI consultation in 2005, the Panel expressed concern that a maximum harmonisation approach would not serve UK consumers well. It is therefore pleased to note that in the re-draft of the EU proposals, there is scope for individual member states to impose obligations over and above the requirements of the Directive. This is an important issue which appears to have been successfully addressed. The Panel is equally pleased that all secured lending has been removed from the scope of the Directive. The Panel was very concerned that following the introduction of the FSA mortgage regime, any further changes imposed by the EU would involve firms in additional cost which would inevitably be passed on to consumers. Therefore the removal of all secured lending is to be welcomed.

Following discussion with the FSA, the Panel understands there is some concern that these proposals may cover some Islamic Home Finance products. There is little benefit and may even be some scope for confusion or detriment where two regimes cover the same products. The Panel would therefore urge the DTI to ensure that dual regulation does not result from these proposals.

Bearing in mind the FSA proposal to move to a more principles-based regime by 2010, and the Treating Customers Fairly initiative, the Panel wonders if there is merit in raising this as an issue against the backdrop of these proposals for an evidently prescriptive regime for consumer credit. Whilst there will hopefully be a strict demarcation between secured and unsecured credit which should avoid confusion and detriment, the FSA TCF initiative could equally apply to the consumer credit market as it does to the mortgage market. Coupled with the Better Regulation initiative, the Panel would urge the DTI to consider this aspect of the changing regulatory environment in the UK.

There are one or two aspects of these proposals on which the Panel would like to make further comment and these are outlined below, in answers to some of the questions posed in the consultation paper. If you wish to discuss anything in this response then please contact me through the Panel Secretariat.

Q3. The Panel could live with an upper limit of €50,000 provided the UK was free to impose a higher limit. The Panel welcomed the proposals in the Consumer Credit Bill to remove completely any upper limit on the protection offered by the Consumer Credit Act 1974. Naturally therefore, any attempt to re-introduce an upper limit would be a backward step for consumer protection.

Q9. The Panel believes the lower threshold proposed in the Directive of €300 is unacceptable. Lower value loans are likely to be taken out by more vulnerable consumers. The Panel sees it as vitally important that these consumers are protected just as much as other consumers and that the UK continues to argue for a much lower limit similar to that existing in current UK law.

Q10. The Panel agrees that the UK should continue to seek exemption for credit unions. The principle of 'light touch' regulation for these organisations is appropriate and should be maintained wherever possible.

Q15. In relation to the 'light touch' regime for re-financing loans, the new proposal suggests this approach where the new lending is likely to avert the possibility of legal proceedings, and the new loan is provided on terms no less favourable than the existing loans.

The Panel can see the consumer focussed argument here: a consumer faced with a poor value credit agreement may be helped by a new better value agreement provided by a socially responsible lender. However, the Panel sees two potential problems with this proposal:

- If consumers have arrears on an existing loan and face the threat of legal action, the Panel struggles to see that another commercial lender will offer a new loan which is genuinely to the consumer's advantage. Any new commercial loan is likely to have terms possibly not immediately apparent to the consumer.
- The definition of 'less favourable' will be troublesome. For example, a consumer with an existing high interest, short term loan may be offered a replacement slightly lower interest, but longer term loan. The new lender could argue that the new loan is no less favourable, but the consumer debt problems will be intensified.

It would be unhelpful if the EU encouraged the growth of non-regulated debt consolidation companies who were able to argue that their loan agreements were no less favourable than existing agreements but which were actually consumer detrimental. The Panel can see the advantage in a light touch regime for consolidation loans genuinely in the consumer interest. Therefore, is a more prescribed definition of 'less favourable' more appropriate here? Would it help to include a requirement that the total cost of credit must be lower under the new loan?

Q16. The DTI's proposals relating to the definition of 'consumer' meet the Panel's previous concerns about UK self-employed consumers. However, given the existing numbers and projected growth of self-employment across the EU, the Panel still feels that the regulations should cover sole traders and small partnerships.

Q21. The Panel does not feel that advertising control should only apply where price information is included in an advertisement, as consumers can easily be misled by information appearing which does not include interest rates. The Panel therefore urges the DTI to press for a regime based on current UK regulations.

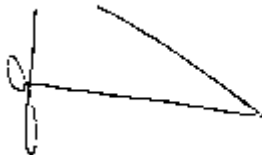
Q22. The Panel has considered the *obligation* of a firm to provide advice in the context of lifetime mortgages and home reversions schemes. In many consumer credit cases there may be little need, for example, for more sophisticated consumers, or very simply straightforward agreements, for advice to be given as a matter of course. That said there are fairly evidently cases where advice *should* be an obligation, where the consumer is particularly vulnerable or where the product is very complex – hence the Panel view that equity release products for the elderly should always be sold via an advised sales process. The Panel would therefore urge the DTI to consider the option of pressing for compulsory advice in certain specific cases. Where the credit is ‘mainstream’ the Panel feels that an obligation to provide appropriate information about the product and consequences of, for example, non-payment, would be sufficient.

Q23. The Panel is fully supportive of the FSA model of responsible lending imposed by the MCOB rulebook. The Panel believes that all lenders should be under an obligation to lend responsibly. It does not therefore agree with the suggestion to introduce a prohibition on irresponsible lending. The Panel does not agree that a responsible lending requirement will necessarily impose specific requirements on lenders. A framework can be implemented to include the basic duty to lend responsibly, perhaps offering guidance on how lenders can achieve this, but ultimately leaving them free to determine how best to assess this in individual cases. The mortgage regime may be a good example to use here.

Q31. The Panel supports the retention of the existing paragraph. It is clear that the information held by credit reference agencies will play an ever more important role in facilitating and protecting consumers’ access to credit. Consumers should both be encouraged and have the right to know about the use made of credit reference databases.

Q42. The Panel can accept the revised Article 14, as UK consumers will continue to benefit from rights under section 75 of the CCA.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Howard'. The signature is written in a cursive style with a large, sweeping initial 'J' and a long horizontal stroke extending to the right.

John Howard
Chairman
Financial Services Consumer Panel