

Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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By email to: CCAreview@fca.org.uk

Dear Charlie,

DP18/7 Review of retained provisions of the Consumer Credit Act: Interim report

The Financial Services Consumer Panel welcomes the opportunity to respond to the FCA's Discussion Paper DP18/7 Review of retained provisions of the Consumer Credit Act: Interim Report. The Discussion Paper provides a thorough and balanced assessment of the issues and we broadly support the FCA's approach and conclusions. In phase 2 of this work, we would like the FCA to examine untested provisions in the Consumer Credit Act (such as section 49), and consider options such as new or strengthened FCA rules where untested provisions leave important gaps in consumer protection.

Q1: Do you have any comments on the overarching issues or their implications for our review?

The Panel strongly believes that a combination of legal rights under the CCA and FCA regulation is the most effective way to protect consumers in a market where consumer harm is common. While it might be more complex to enforce across different pieces of legislation, this is not insurmountable, as we see in other areas such as payments.

Unlike some respondents to the Call for Input, we do not agree that the FCA's greater powers mean CCA protections are no longer necessary. [As we have outlined elsewhere](#), we are concerned about the limits of the FCA's supervisory reach across 30,000 consumer credit firms and its ability to prevent harm occurring rather than reacting to harm when it crystallises. [We have also questioned](#) the apparent reluctance of the FCA to use the full range of its regulatory powers. The CCA therefore remains an important tool for consumers and consumer advisers to hold the industry to account.

In addition, the CCA covers all types of credit, including new product types. This means that consumers who use credit products that fall outside the FCA's perimeter have access to consumer protection and redress – something that is increasingly important due to unintended consequences and 'waterbed' effects that can result from FCA regulation. This review presents a timely opportunity for the FCA to consider cross-cutting issues and emerging regulatory challenges in a dynamic market.

The Panel is concerned about protection for borrowers when consumer credit loan books are sold to firms that operate outside the regulatory perimeter. We understand that borrowers continue to be covered by the CCA in this situation. This is an important protection and one that should be retained given recent business failures in the payday

loan, and the poor treatment of mortgage borrowers when mortgage loan books are sold to unregulated private equity firms.¹

Q2: Do you have any comments on our analysis and initial views on rights and protections or the associated issues in Annex 5?

We support the FCA's analysis. We do not wish to see any weakening of consumer rights and protections in a market where firms routinely exploit consumer biases and, despite tougher FCA regulation, poor conduct persists. While the industry views some of the sanctions as 'draconian', anything less is likely to be ineffective.

In particular, we do not want to see any dilution of the rights and protections in relation to unfair relationships. We do not believe that the FCA's principles for business as currently drafted can offer a similar level of protection from unfair treatment, This underpins our call [for an industry-wide 'new duty' for financial services firms](#).

The FCA should challenge the industry to substantiate its claims that consumers are 'gaming' some provisions of the CCA (such as voluntary termination in motor finance).

Q3: Do you have any comments on our analysis and initial views on information requirements or the associated issues in Annex 6?

We support the FCA's approach to use the CCA review as an opportunity to make disclosure more effective for consumers, particularly given the substantial body of evidence that now exists on this issue (including the FCA's own behavioural insights). The FCA should continue to require firms to provide information to consumers, but the information must be meaningful. Simply 'making information available' to consumers, for example by directing them to a website, is not acceptable.

Q4: Do you have any comments on our analysis and initial views on sanctions or the associated issues in Annex 7?

Q5: In particular, do you have any views on our proposals in relation to unenforceability and disentitlement?

We agree that the provisions on unenforceability and disentitlement cannot be repealed without adversely affecting consumer protection. Automatic sanctions help deliver effective consumer protection and give power to consumers and their intermediaries, as well as allowing a route to redress. This protection should not be watered down. While lenders have argued that strong sanctions are disproportionate in the case of minor technical breaches of information requirements, the Panel does not find this argument compelling – lenders should be able to get these basic requirements right first time.

Yours sincerely

Sue Lewis
Chair, Financial Services Consumer Panel

¹ <https://www.ft.com/content/cb05d0ce-0fcc-33e7-a639-c7323224c2db>
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