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Dear Anna,

High-level proposals for the Financial Conduct Authority regime for consumer credit

This is the Financial Services Consumer Panel's response to the high-level proposals for the Financial Conduct Authority (FCA) regime for consumer credit. The Panel has consistently expressed the view that regulating consumer credit separately to other financial services was confusing, and has long argued that it should have been brought within the Financial Services Authority's regulatory remit. We are therefore delighted that the FCA will now provide a unified regime.

Whilst welcoming the transfer of the credit regime to the FCA, we believe it is not without challenges, not least given the exacting timescales in place. Our detailed responses below draw out several areas, where significant effort will be required to ensure the new regime is successful.

In general we believe the following areas will be key to the FCA delivering an effective, enhanced regime, which provides a competitive sector focused on good outcomes for consumers:

- **Enforcement:** the FCA will need to have an appetite for early intervention and strong enforcement in order to protect consumers, provide clear deterrence and maintain a level playing field for fair trading businesses;
- **Flexibility:** it is important that various aspects of the new regime are evaluated early to ensure it is delivering its objectives and changes are made where it is not;
- **Partnership and cooperation:** the FCA will need to invest substantial time and effort in ensuring effective relationships exist with local authority Trading Standards Services and other organisations it has not previously worked with to any great extent.

Yours sincerely,

Adam Phillips

Chair
Financial Services Consumer Panel

Detailed responses to questions

Question 1: What are your views on the Government's proposal to carry forward CCA conduct requirements which cannot be easily replicated in FCA rules? Do you agree with the Government's intention to require the FCA to review these retained CCA provisions, with a view to moving to rules-based alternatives wherever possible?

In the 2012 Consumer Panel position paper on the regulation of consumer credit¹, the Panel stated that responsibility for consumer credit regulation should be transferred to the FCA, initially under the CCA regime, but with an aim of reviewing whether transitioning to FSMA-style rules would be appropriate at a suitable time. This view was based, amongst other reasons, on the importance of retaining existing levels of consumer protection during the transition. The protections specified included, for example, sections 40, 75 and 140 which ensure that goods and services provided through the provision of credit are fit-for-purpose and sections 129 and 136 that protect consumers who experience difficulties repaying any monies borrowed.

The Panel maintains the view that it is vital that these important protections are brought across to the new regime. Therefore, we welcome the Government proposal for the FCA to retain CCA conduct requirements, which cannot currently be replicated in rules. The Panel believes this to be a fair and proportionate approach.

Whilst agreeing that it is sensible for the FCA to review the retained provisions going forward, we believe that conduct requirements should only be removed at a time when there is full confidence that there will be no lessening of existing levels of protection.

Question 2: do you agree that we have included the right activities in the higher and lower risk regimes?

The Panel broadly agrees with the categories of activities included in the higher and lower risk regimes. However, we would like to see movement between authorisation categories enabled at secondary legislation level and would like the categories and categorisation kept under review. We believe the regime needs to be agile and flexible in order to ensure individual businesses and wider business models can be moved between categories quickly and easily.

For example, we note that car dealerships, introducing customers to lenders, are categorised as lower risk. This may be appropriate for the most part, given that not all dealerships are high risk, but we do not feel that this category should necessarily be rigidly applied sector wide. There are well documented issues in parts of the used car sales market, particularly where bills of sale have been used (so-called log book loans) and figures have been altered on hire purchase agreements to manipulate the selling price and part-exchange price over the years. Second-hand cars are a perennially high volume complaint generator and credit is necessary for lower income people to buy them. This is recognised by debt advisers as a hire purchase

¹ http://www.fs-cp.org.uk/publications/pdf/position_paper.pdf

debt to pay for a car is treated as a priority debt. Where there are operators in this sector that are identified as high risk we would expect them to be categorised as such. It will be important for the FCA to work with local authority Trading Standards Services in this regard, given they have a good understanding of traders operating in their areas and the specific risks they pose. The Panel is keen to ensure access to finance for consumers in this sector is maintained - so agree with keeping costs down - but would also want to be reassured that they are protected.

The Panel also believes it is important to recognise that over recent years there has been a growth in incidences where the lines between profit seeking and not for profit business models have blurred. This phenomenon may well increase in the future as funding structures change and additional pressure is placed on organisations to make ends meet. Again, flexibility will be required to ensure all models are incorporated within a regime that monitors them effectively, whilst not placing unnecessary burdens on them.

Question 3: do you agree that our proposals minimise the impact on competition within the regulated consumer credit market?

Where competition works well it provides significant benefits for consumers by increasing choice, driving down prices, promoting innovation and better quality goods and services. These benefits are not sustained in markets where operators gain advantage by exploiting consumers, cutting corners (e.g. not carrying out adequate affordability assessments) and operating unfairly.

The Panel believes that the FCA, through tough enforcement actions and higher penalties to remove firms' incentive to engage in practices damaging to consumers, is well positioned to deliver positive consumer outcomes by creating a level playing field for the promotion of competition.

Strong proportionate enforcement will deliver better outcomes for consumers and fair trading businesses, as well as providing a deterrent for those tempted to operate in an unacceptable manner.

In addition to strong enforcement, on-going supervision of consumer credit will be a key factor in making this market work well. The FCA will need to adopt a flexible approach to identify and fully understand emerging consumer and competition issues affecting this area.

Question 6: Do you agree it would be appropriate for the FCA to apply the approved persons regime activities as proposed?

The Panel agrees with the proposal to apply the approved persons regime activities as proposed. We believe that having effective governance systems and processes in place is vital for the delivery of consistently good outcomes for consumers. We made this point recently in response to the Government consultation on raising the interest rate cap on credit unions² and feel being part of the approved person regime should help to improve standards in this area.

² <http://www.fs-cp.org.uk/publications/pdf/CP-response-HMT-consultation-Credit-union-interest-rate-cap20130226.pdf>

Question 10: Do you agree with our approach to professional firms?

The Panel agrees with the proposed approach. However, it will be important for FCA to engage with relevant bodies within the individual professional services space, such as the Legal Services Board, in order to identify emerging issues and problems resulting from alternative business structures and product design.

Question 13: Are there other measures that would ensure our prudential regime for debt management firms targets the firms that pose the greatest risk to consumers?

The Money Advice Service (MAS) recently consulted on its proposed Debt Advice Framework, aimed at achieving consistent and high quality debt advice. The Framework encompasses three quality assurance areas, which the MAS considers essential for managing an organisation well: governance, client needs and learning.

The Panel believes that the Framework, through the auditing processes debt advice organisations will be required to follow, may offer a way of ensuring that prudential standards are being met. Knowing that Framework members are meeting prudential standards as part of the governance quality assurance area, would allow the FCA to focus greater attention and resource elsewhere.

Question 15: Do you agree with our proposed approach to financial promotions?

The Panel agrees with the proposed approach to align the supervision of consumer credit advertising with the supervision of the existing financial promotions regime.

However, given the potential for duplication of effort under the new regime, it will be important for the FCA to engage with ASA on an on-going basis. The financial promotions regime's 'clear, fair and not misleading' rule, creates clear overlap with the ASA remit in terms of judging all advertisements and promotions (including credit) in terms of being misleading, unfair, offending taste and decency etc.

The ASA has worked closely with the OFT and Trading Standards to develop a clear understanding of roles and to establish clear processes for referring credit advertisement complaints (of a technical nature) on to them, as appropriate. The FCA will also need to work with the ASA to foster a similar relationship and develop an established set of processes under the new regime.

Question 16: Are there provisions within industry codes that you think should be formally incorporated into FCA rules and guidance?

As we set out in response to question two of our response to Government consultation: A new approach to financial regulation, consumer credit regulation is a significant new challenge for the FCA, with a wide diversity of firms, a large number of small players, and significant potential for consumer detriment to occur. A credible, effective self-regulatory regime could take responsibility for monitoring and improving standards across the sector, allowing the FCA to focus its resource on supervision of the higher risk, harder-to-reach suppliers and tackling big, industry-wide issues.

Nevertheless, although there may be an on-going role for self-regulation in the this sector, the Panel believes that provisions within current industry codes that provide for higher levels of protection for consumers than legislation alone should be formally incorporated into FCA rules and guidance. We encourage the FCA to identify these provisions and to determine whether or not incorporating them would go beyond maximum harmonisation with the Consumer Credit Directive 2008. The obvious benefit of incorporating provisions within industry codes into FCA rules is that they would be binding and provide consumers with a route to redress under section 150 (1) of the Financial Services and Markets Act (2000):

“A contravention by an authorised person of a rule is actionable at the suit of a private person who suffers loss as a result of the contravention, subject to the defences and other incidents applying to actions for breach of statutory duty”.

Question 17: Do you agree with the different standards that we propose to apply to different types of debt advice?

The Panel supports the concept of applying different standards to different types of debt advice and broadly agrees with the level of risk that has been applied to the different debt advice activities. However, we would suggest that the FCA ensures the standards it intends applying complement, or are at least aligned, with the minimum standards proposed within MAS debt advice framework.

Question 19: Do you have any comments regarding our proposed approach to peer-to-peer platforms?

The Panel agrees that consumer borrowing or lending via peer-to-peer platforms should be provided with enhanced protection and believes that requirement on areas, such as the creditworthiness of borrowers, will bring credibility and stability to this fast-growing industry. However, any new rules in this fast growing area need to be proportionate and not stifle growth. Peer to peer lending can be a valuable part of meeting unmet demand from both savers and borrowers and offers an alternative to mainstream borrowing.

Question 22: Do you have any comments regarding our proposed approach to enforcement?

As mentioned in response to question three, the Panel believes that the FCA, through tough enforcement action, is well positioned to create a level playing field, which promotes competition and delivers positive consumer outcomes. Collaboration with new partners, particularly local authority Trading Standards Services (TSS) will be important in providing the FCA with intelligence and helping to deliver successful enforcement outcomes. We urge the FCA to engage with the OFT in order to build on its experience in this regard. The OFT's primary responsibility has been to issue credit licenses, and to work with TSS to ensure that firms' treatment of consumers adheres to the provisions of the Consumer Credit Act. The FCA will have a different approach to this and it is vital that a clear understanding of roles and interactions with TSS and others is in place from the outset.

There have been times when the Panel has felt the FSA should have adopted a much tougher approach to enforcement. Until firms believe that they will be punished for breaching the rules they will not make compliance with rules a priority. The FCA,

with its enhanced enforcement toolkit, can now be much more vigorous in terms of enforcement to protect some of the most vulnerable consumers in society, whilst providing strong warnings to those businesses intent on operating outside of what is deemed acceptable. The Panel welcomes the fact that the FCA is committed to more enforcement cases and to press for tough penalties for infringements of rules. There is clearly great expectation amongst consumer groups, stakeholders and the public for FCA to demonstrate this commitment in practice. Ultimately the new organisation will be judged on results.

Question 23: Do you have any comments regarding our proposed approach to complaints and redress?

The Panel supports the approach to complaints and redress. We welcome the fact that firms carrying on consumer credit activities will be required to report, and where appropriate publish complaints information. We view the gathering complaints data and information as a fundamental part of good organisational governance and as such will help organisations assess their own performance and identify areas for improvement.

Question 24: Do you have any comments on our proposed approach to tackling financial crime?

The Panel believes that our response to question 22 is of equal relevance to tackling financial crime. Tough enforcement, strong deterrence and collaboration will be vital if FCA is to be successful in this area. This applies not only to firms targeting consumers directly, but also where firms' actions expose consumers to the risk of financial crime.

The Panel also agrees with the required measures consumer credit firms will have to take to protect themselves from financial crime, and believes these are proportionate based on the exceptions set out in chapter 12 of the consultation.

Question 27: Do you agree with our market failure analysis?

The Panel agrees with key failures identified within the Market Failure Analysis. Yet whilst noting that the analysis has been kept high-level, we feel there are one or two points worth making. Firstly, the Panel feels the analysis could have demonstrated a more detailed understanding of non-mainstream lending models and consumer risks. Secondly, although the analysis discusses information asymmetries, which clearly exist in some parts of the consumer credit market, there is a wider issue of consumers lacking information about the full range of options available to them. Given the different approaches and pricing models offered by different providers, the chances of a consumer finding the most appropriate credit for his or her particular circumstances is often severely constrained by their lack of knowledge. In the Panel's experience, even quite financially aware consumers can take the wrong decision based on a lack of knowledge.

Question 29: Do you have any comments regarding our proposed approach to second charge lending?

The Consumer Panel agrees with the FCA approach to second charge lending and believes this to be proportionate given the timing of the Mortgage Credit Directive.

The Panel has noted previously that second charge lenders are often those who are the quickest to force possession proceedings or act unscrupulously. For this reason, we believe in the longer term this area should be made consistent with first charge lending and will be making this point where possible in relation to discussions on the Mortgage Credit Directive.