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Financial Regulation Strategy,
HM Treasury,
1 Horse Guards Road,
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30 April 2013

Dear Sir/Madam,

A new approach to financial regulation: transferring consumer credit regulation to the Financial Conduct Authority

This is the Financial Services Consumer Panel's response to the Government consultation on a new approach to financial regulation: transferring consumer credit regulation to the Financial Conduct Authority.

With an enhanced enforcement toolkit and new set of operational objectives - providing it with a strong consumer protection mandate - the Panel believes that the new Financial Conduct Authority (FCA) has the necessary powers to introduce an era of more effective regulation within the financial conduct space.

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 fully within the financial services regulatory remit. We believe that the FCA, with the benefit of economies of scale and engagement with the firms it currently regulates, will be able to deliver a well-functioning, consumer focused and competitive credit sector.

Whilst welcoming the transfer of the credit regime to the FCA, we believe it is not without challenges, not least given the exacting timescales involved. We have provided detailed responses to specific questions addressing these challenges, below.

In general we believe there are several key areas where significant focus and effort will be required by the new regulator:

- ensuring key protections from the Consumer Credit Act (CCA) are not lost;
- demonstrating a strong appetite for enforcement that promotes effective competition and delivers real value for consumers;
- ensuring flexibility (e.g. between risk categories) and ensuring early evaluation of relevant parts of the regime to ensure their effectiveness;

- cooperating and building new partnerships, not only to clarify roles, but also to coordinate enforcement, achieve proactive compliance and to ensure all operators are aware of new arrangements.

Yours sincerely,

Adam Phillips

Chair
Financial Services Consumer Panel

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 in the short term. The protections the Panel was concerned about 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, it welcomes the Government proposal for the FCA to retain CCA conduct requirements, which cannot currently be replicated in rules and 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, the Panel believes 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: How, if at all, do you think industry codes can complement FCA conduct 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. There are some good examples of self regulation playing an important complementary role to statutory regulation in other sectors, most notably in the advertising industry. However, for self regulation to play this role in relation to consumer credit, it is important that the FCA sets out clearly how it sees this role contributing to the regulatory environment, and what it expects self-regulation to deliver.

It is also critical that trade bodies operating in the consumer credit sector are able to deliver credible and effective self-regulation. The fragmented nature of the credit market and wide variation in the coverage of lenders by existing trade bodies suggests that this could not currently be achieved across the market. The FCA could

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

play a crucial role in raising and achieving greater consistency in standards of self-regulation across the credit market by setting out the criteria which trade bodies have to meet in order for the FCA to recognise their activities and industry codes.

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 3: What are your views on the Government’s proposals for the two tier authorisation regime? Is the scope of the limited permission regime right?

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 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 group of consumers in this sector is maintained - so agree with keeping costs down. However, we 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 5: What are your views on the proposed approach for dealing with those currently covered by group licences?

The Panel is content with the proposed approach for dealing with those currently covered by group licences. However, in relation to not for profit debt advice, there are some providers that do not currently operate under group licences, such as that held by the Citizens Advice Bureaux, but rather hold individual standard credit licences. Initially these providers, who will comprise of a range of charitable and altruistic bodies, will need to notify the FCA that they would like to hold an interim permission in order to operate. The Panel believes this requirement on the latter group will need to be well communicated and the fact that they will not have to pay for the interim permission made explicit.

Question 8: What are your views on the proposed new activity to capture the activities of 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.

Questions 10: What are your views on the Government's proposal to repeal many of the criminal offences in the CCA and make breaches of these requirements, once in rules, subject to the FCA's enforcement toolkit?

The guiding principles in transferring consumer credit regulation to the FCA should be that consumers should be better protected, and that the regulatory regime should be proportionate to the types of firms and risks posed by them.

As mentioned in response to question 1, 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. In taking action where rules are broken, the FCA will need to ensure fines levied are appropriately high enough to remove firms' incentive to engage in practices damaging to consumers and to act as a clear deterrent to firms who may decide to copy them. Vigorous deployment of analytical resources, rule-making and enforcement powers to promote effective competition that delivers real value to consumers should be central to the new regime.