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Our ref: CP10/15* Chapter 7

Dear Kirsten

CP10/15* Quarterly Consultation no 25: Chapter 7

This is the Financial Services Consumer Panel's response to the proposals in Chapter 7 of CP10/15*.

The inappropriate application of set-off by firms can cause considerable hardship and difficulty for individual consumers. As the FSA says in the Consultation Paper, there is evidence that consumers have been left with insufficient funds in their accounts to meet essential living costs such as rent and that problems caused by the use of set off are increasing. The Panel has particular concerns about the application of set-off on accounts held on behalf of children and those where a power of attorney is in place.

We are pleased that the FSA is responding to the clear need for firms to be reminded of their obligations regarding the right of set-off, including the need to keep consumers informed. We urge the FSA to monitor firms' use of set-off closely, including the use of detailed file reviews, and to be ready to use enforcement action whenever appropriate. If the proposed guidance does not deliver the right outcomes for consumers within the first few months, we would like the FSA to reconsider the introduction of prescriptive rules in this area.

We have set out our response to the specific questions in the consultation paper below.

Q21: Do you agree with our proposals that information about set-off should be provided in the account terms and conditions?

and

Q22: Do you see a need for further information, beyond that set out in our proposal, to be provided about set-off when a customer opens an account?

Warnings about a firm's right of set-off should be made clear at the point of sale, before the customer has entered into any agreement with the firm. This must set out what set-off actually means and when/how a firm could apply its right of set-off. We have no objection to the information being included in the account terms and conditions, but it cannot be buried in the small print or simply included in the very long list of other terms and conditions that is often produced in relation to new accounts. If firms are not prepared to highlight the information within the account terms and conditions, it should also be provided in a separate document at point of sale. We recognise the risk noted by the FSA of 'information overload' in requiring firms to do this, but we consider set-off to be a sufficiently important issue for this step to be taken.

Q23: Do you agree with our proposal for firms informing customers of the right of set-off when they are beginning or continuing to experience difficulty in meeting their payment obligations?

We agree with this proposal, provided that where the information is included within another document sent by the firm its meaning is absolutely clear and it is given the necessary priority and emphasis. The effectiveness of communications of this type should be assessed by the FSA.

Q24: Do you agree with our proposal that customers should be promptly notified about the use of set-off on their account?

Yes, we support this proposal. "Promptly" should mean on the day that the set-off takes place.

Q25: Do you agree with our proposals for exercising the right of set-off fairly?
and

Q26: Do you have any suggestions of other ways of exercising the right of set-off fairly?

We agree with these proposals, but firms should also be obliged to consider representations from customers in case of specific needs that the firm has not taken into account in its calculations. We believe that this is consistent with the principle of Treating Customers Fairly and with basic common sense.

Q27: Do you agree with our proposal that firms should not use set-off in the types of scenarios listed above?

We agree. This is another area however where the effectiveness of the guidance must be assessed as a priority. If firms are still effecting set-off in circumstances where it simply should not apply, the FSA will need to take immediate action to ensure compliance. We are particularly concerned that firms may be applying set-off to joint accounts.

Q28: Do you agree with our proposal to apply the guidance in the information requirements to credit unions, but exempt them from our post-sale guidance on set-off?

Yes, we support this proposal.

Q29: Do you agree that our proposed guidance should take effect immediately?

Yes. There is no justification for transitional arrangements.

Q30: Do you have any comments on our proposed amendment to BCOBS 4.1.4G(8)?

This clarification seems appropriate.

Yours sincerely

Adam Phillips
Chair
Financial Services Consumer Panel