Financial Services Consumer Panel
AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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# Response to "A new approach to financial regulation: consultation on reforming the consumer credit regime"

## Introduction

The Financial Services Consumer Panel ("the Panel") is a statutory body established under s.10 of the Financial Services and Markets Act 2000 (FSMA). Initially established by the Financial Services Authority in December 1998, the Panel advises the FSA on the interests and concerns of consumers, and reports on the FSA's performance in meeting its objectives in the regulation of financial services. It also looks at the impact on consumers of activities outside, but related to, the FSA's remit.

## Executive Summary

The Financial Services Consumer Panel welcomes the consultation on reforming the consumer credit regime. We view this as a critical issue that requires consideration, particularly in the context of other current changes to the regulatory regime for financial services. Reviewing consumer credit regulation now presents a unique opportunity to strengthen the regulatory overview and rationalise the approach to consumer protection across the financial services market. Like the recent HMT consultation, it should provide a platform to shape future legislation.

Credit plays an increasingly critical role in the economy. The regulation of credit is particularly significant due to the high proportion of consumers who use it, the size and nature of the sub-prime market and the extent of detriment that can result from irresponsible lending and borrowing. Crucially, credit regulation also has a key role in mitigating the size and impact of the illegal lending sector, prevalent in the most deprived areas of the UK. Regulation, therefore, needs to specifically address issues of access, price, responsibility and fairness right across the credit market, which is characterised by a high degree of variation and products, methods and targeting, and a plethora of small, often sole, traders.

The document presents two options for the future regulation of credit:

1. Consumer credit is regulated under a new FSMA-style consumer credit rulebook by the FCA.
2. Consumer Credit continues to be regulated under the CCA. The regulatory authority with responsibility for consumer credit under this option would not be confirmed until the outcome of the consultations on the future of the competition and general consumer functions of the OFT.

The consultation document clearly favours Option 1 stating that "There is no doubt that the application of FSMA-style requirements to consumer credit firms could lead to important consumer protection and market oversight benefits."

The Consumer Panel, while favouring a unified regime under a single financial services regulator, feels that the potential consumer benefits arising from FSMA-style regulation may not be as clear cut or assured as the view presented in the consultation document. The Consumer Credit Act (CCA) was developed following an extensive consultation process involving a wide network of consumer stakeholders and its provisions have served customers well. The outcome of the proposed regulatory reform needs to enhance current levels of consumer protection. While welcoming the current consultation and recognising the considerable progress the FSA has made in terms of consumer protection over the last 18 months, the Consumer Panel fears that some of the limitations associated with the FSMA style of regulation could undermine the current level of consumer protection, at least in the short-term. However we are also aware of the persistence of gaps in the regulation of retail banking which have not been addressed by the FSA taking over regulating the deposit taking side of retail banking, a situation we feel could be tackled by a single regulator for all retail banking services.

Therefore, we present, below, a case for transferring responsibility for consumer credit to the FCA as part of a risk-based approach to regulation, including retention of the Consumer Credit Act provisions, alongside well-resourced intelligence and enforcement functions at local level, for the higher risk elements of the market. A comprehensive model of assessing the level of risk presented by different categories of lender requires detailed consideration, but could include factors including the size of the firm, size and nature of target market and product offerings. We feel that this offers the optimum combination of the two existing regulatory models – providing consistency and clarity across the market, greater efficiency in the regulation of the retail banking activities of authorised firms and, crucially, comprehensive scrutiny and enforcement in relation to small traders and, especially those operating in the sub-prime market.

There are, however, some important timing issues that must be taken into account during this consultation and the stages that follow. The development of the FCA is still at a very early stage and its ethos, culture and approach to consumer protection are not yet known. Decisions about the future of credit regulation must take account of the development of the FCA, to ensure that its structure and operating style are appropriate in the context of those decisions. Transferring the regulation of consumer credit to the FCA will add significantly to the remit of this new body: it is essential that the implications are fully understood, effectively resourced and costed. In addition, this consultation closes before the reports of the Independent Banking Commission and the Lending Code Review are published. Again, these important initiatives must feed into the post-consultation process to ensure a well-informed and joined-up approach.

There is, inevitably, some concern that reform of credit regulation creates the risk of reducing resources to this area in a way that will weaken consumer protection. The Consumer Panel urges the Government to undertake any subsequent reform following the consultation process with a view to the potential longer-term social and economic outcomes rather than the short-term costs associated with effective change.

Given these issues we recommend that, should a decision be taken to transfer responsibility for credit regulation to the FCA, the Government launches a staged consultation process covering the detail relating to this transfer and its implementation. The Panel feels strongly that consumer protection in relation to credit must be enhanced by a transfer of responsibility and absolutely must not be diminished, even in the short-term, while the new regime beds in. In the context of

remaining gaps and overlaps in retail banking regulation, which evidence suggests have been heightened during the transition to FSA regulation, it is critical that regulatory reform will deliver, at the very least, a comparable level of consumer protection from the outset.

## Consultation questions

### Chapter 1 – The case for reform of the consumer credit regime

1. **Do you agree with this assessment of the consumer credit market?**

The Consumer Panel agrees that the wider institutional reform represents a good opportunity to reconsider the approach to credit regulation and, provided that the FCA is able to deliver excellence in consumer-focused regulation, offers the chance to significantly enhance protection for consumers of credit. The FSA has demonstrated significant progress over the last 18 months in terms of consumer protection and we are relatively optimistic that this agenda will be pursued in the FCA. The powers outlined in the latest HMT document "A new approach to financial regulation, building a stronger system", if realised, present a strengthened consumer protection authority which should deliver better consumer outcomes.

We also agree that in the uniquely diverse, large and rapidly growing consumer UK credit market, consumers require a regulatory model that offers the optimum outcomes. In particular, we support the view that regulation must be able to recognise and respond, rapidly and flexibly, to the wide range of risks and consumer outcomes that characterise unsecured borrowing, without imposing disproportionate barriers to market entry or deterring competition.

The current model of credit regulation, despite being extensive, multi-layered and complex, still results in gaps and overlaps in activity which cause consumer detriment.

2. **Is this a fair assessment of the problems caused by the way in which consumer credit is currently regulated and issues that may arise as a result of the split in responsibility for consumer credit and other retail financial services?**

The consultation paper lists these as:

- accountability for some objectives split,
- lack of coherence in consumer protection and market oversight,
- confusion and duplication,
- too reactive and insufficiently flexible,
- deterrent to effective deregulation.

The Panel agrees that lack of accountability, lack of coherence, and confusion and duplication have been inherent in the current split in responsibility. However we are sceptical that deregulation of consumer credit regulation is a desirable goal when there is a high risk of consumer detriment.

We also feel that the Consumer Credit Act (CCA) offers key aspects of consumer protection that should not be lost. The Panel has, at times, been critical of the FSA's legalistic interpretation of its responsibilities under FSMA,

examples include a lack of effective implementation of the Treating Customers Fairly principle and a reluctance to exercise Own Initiation Variation of Permissions on authorisations It is critical, therefore, that transfer of credit regulation to the FCA under a FSMA-style regime offers at least a comparable level of consumer protection as the CCA and, preferably, delivers a significantly enhanced model of consumer protection. Ultimately, the success of the proposed regulatory change must be measured against this benchmark.

3. **The Government would welcome further evidence relating to the consumer credit regime, including in particular:**

- **the types of risks faced by consumers in consumer credit markets;**

Whilst not attempting to provide a comprehensive list of risks the following are those that the Panel believe are significant.

Events leading up to the recession saw irresponsible lending and easy access to credit, an industry focused on short term profits and consumers focusing on short term costs, benefits and affordability. These factors led to more complex pricing structures and products and failures in consumer protection. Lack of competition, unfair business models, and failure of regulation continue to present risks to consumers. These are illustrated by the entrenchment of bank charges, rather than up-front costs, as a significant profit vehicle.[1]

> "There is a continuing lack of transparency about the real cost of banking services and it is difficult for consumers to help drive down the cost of unarranged overdrafts or other charges, whether explicit or hidden, by shopping around. The voluntary approach to dealing with unauthorised overdraft charges relies on banks improving themselves, yet they have patently failed to do this in other areas in the past."[2]

Unfair bank charges continue to pose significant risks to consumers and are largely beyond their control. The nature of the charges themselves is such that the poor pay more for banking services and significant cross-subsidies apply. Their lack of transparency inhibits competition and choice.

Further risks are evident in the rationing of credit and increases in the cost of credit. The lack of mainstream credit options for those on low incomes and those who prefer not to use credit products that are delivered and/or repaid via a bank account has seen the increase in use of sub-prime lenders and this market is likely to expand.[3] In addition, in the current credit-constrained climate, even some of the sub-prime lenders are shifting to a more up-market

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[1] Paul Johnson, "Free or Fee: Are 'free' products good for consumers?" in Consumer Focus, Rethinking Financial Services, Focus on Finance Review, June 2010.

[2] Financial Services Consumer Panel submission to the HMT/BIS Consumer Credit and Personal Insolvency Review, December 2010

[3] Consumer Focus, Keep the Plates Spinning, August 2010

target population, leaving the most vulnerable consumers at risk of falling prey to illegal lenders.

In a time of restricted availability of credit, and in particular of personal loans, credit card interest rates have continued to rise. Whilst the base rates are at a historic low of 0.5%, average APRs are now 38 times base rates, the highest margin on record.

The Panel also believes that the system of minimum repayments on credit cards is another area in need of attention. Under the current system, it is possible for consumers to make an acceptable level of repayment and yet still remain in debt for many years. For example, on a £3,000 credit card debt at 17.9% APR, a customer making a monthly minimum repayment of 2% of the outstanding balance would take 41 years to clear the debt in full, at an interest cost of £6,300. Changes to the Lending Code to ensure the minimum repayment is set at least at 1% of the principal do not, in the Panel's view, go far enough. The information provided to borrowers about their options in setting repayment levels, and the impact of choosing only to make the minimum repayment, are not sufficiently clear.

- **key provisions for consumer protection under the current regime and their effectiveness in securing appropriate outcomes for consumers; and**

Under the CCA and the OFT's jurisdiction there are some key provisions and approaches to consumer protection that, we would argue, need to be preserved regardless of where responsibility for regulation sits. In particular, we refer to elements of the CCA and the Consumer Protection from Unfair Trading Regulations that provide for:

  - strict liability
  - render contracts unenforceable,
  - cooling off periods and termination rights,
  - the liability of creditors such as card issuers for supplier breaches (s.75),
  - hardship provisions, particularly in relation to re-opening agreements and to repossessions,
  - the powers to make orders in unfair relationships
  - the right to reject interest rate hikes
  - early settlement provisions (with a rebate of part of the interest charge) which provide an opportunity to pay off a loan early, allowing goods subject to a credit agreement to be taken in part -exchange.
  - prescriptive information requirements, (eg interest rate disclosure has been a feature of statements on credit products but it has taken a super-complaint to get interest rates on savings account statements)
  - regulation of financial promotions and misleading advertising

In addition, the current regulatory approach is far more transparent than that currently taken by the FSA, revealing details of prosecutions, market investigations and undertakings, rather than just successful enforcement action. The Panel believes strongly in the power of transparency as a consumer protection tool, providing consumers with the opportunity to make choices based on on-going regulatory intelligence. We would argue, therefore, that the FCA should have clear obligations and powers to perform

its role in a transparent and accountable way using reputational regulation to facilitate consumer choice.

The OFT, under its consumer protection legislation, can also impose fines, specific requirements on firms and restrictions on their activities under their licence, and require them to rectify unfair behaviour in a more responsive and specific way than the FSMA rules. There are clear, responsive and flexible avenues for taking action. The operation of "stop now" orders is particularly effective in limiting consumer detriment from unfair practices and allows intervention without the sometimes cumbersome requirements in the FSMA for CBAs and consultations. Regulation of credit should retain these important protections and include a greater appetite to fine those who are causing consumer detriment.

- **the incidence of regulatory duplication or burdens on firms and/or inconsistent regulation of similar types of business.**

The aim is to achieve cost effective regulation of firms, recognising that costs are usually passed on to consumers by way of price increases. Whilst duplication exists because of the split in regulation, creating a unified regulator and addressing the risks now crystallised in this market requires effective regulation and sufficient resources.

4. **Do you consider these objectives for reform of the consumer credit regime to be appropriate and attainable?**

The stated objectives of the proposed regulatory reform are :

- clarity, coherence and improved market oversight;
- effective and appropriate consumer protection, including through a responsive and flexible framework;
- simplification and deregulation
- proportionality and cost effectiveness.

The Panel supports most of these objectives for reform. In particular, we would welcome a properly resourced regime that has the necessary powers to secure better market information and ensure earlier identification of risks to consumers. We remain very sceptical, however, that deregulation is desirable in the credit market where the risk of consumer detriment is high.

**Chapter 2 – Options for the regulation of consumer credit**

5. **The Government welcomes views on the impact a unified regulatory regime for retail financial services may have in terms of clarity, coherence and improved market oversight.**

The current split of regulatory responsibility between the FSA and the Office of Fair Trading has made regulatory action more problematic, particularly in areas that straddle jurisdictions, and has resulted in consumer detriment.

Whilst the OFT and FSA published their first action plan for delivering better regulatory outcomes in 2006, and on 1 November 2009 a new concordat was agreed between the regulators setting out where responsibility for various parts of BCOBS and the Payment Services Regulation lies, it is still not clear

how effectively overlapping regulatory issues are dealt with on a day to day basis.

Recent examples indicating persistent problems include:

- Set off - The question of set-off and how its misuse is being tackled is an example of the lack of clarity that can arise. For example, does the Principle of Treating Customers Fairly apply to the entire set-off process, or only the part that relates to accounts in credit, and how does this work in terms of enforcement?[4] The division of responsibility has been cited as an obstacle to the FSA dealing with the issue and consumers continue to experience detriment as a result.

- Unfair bank charges - The issue of unfair charges, and particularly unauthorised overdraft charges, should be part of banking conduct regulation but there was no overview of this area because of the credit/banking regulatory split, the failure of self-regulation under the Banking Code to deal with the issues, and the lack of jurisdiction of the FSA in the area until November 2009. No action has been taken since the failure of the OFT's Supreme Court action in 2009, despite the court indicating other options to tackle the issue.

- PPI – The mis-selling of PPI continues unchecked. Consumers may justifiably view the credit transaction and sale of PPI associated with it (and in fact often included and financed by the credit agreement) as one transaction.

- Packaged products – The growth of packaged products, including an expansion of packaged credit cards, creates significant barriers to competition. Costs are not transparent and increasingly credit cards and preferential savings rates are being offered only if you have a current account with the same provider. Regulation of packaged products is likely to be split or fall between the gaps between providers.

6. **The Government welcomes views on the role of institutions other than the OFT in the current consumer credit regime, and the benefits they may confer.**

The current OFT model relies on local level enforcement from Local Authority Trading Standards Services (TSS). An enforcement presence at local level means that surveillance, inspections and complaints investigations can be organised according to the risks to particular local communities and using the full array of consumer protection tools. The credit market is diverse. For example, some of the higher risk activities are perpetrated by small businesses in the homes of the financially excluded, in other cases credit is linked to sales of goods and services such as second hand cars and home improvements.

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[4] Financial Services Consumer Panel, Regulation of Retail Banking Conduct of Business, A review of the first year of the new regulatory framework, November 2010.

General consumer information, assistance and advice, including consumer credit advice, is currently provided by Consumer Direct and this level of service needs to be maintained for consumer credit queries preferably as part of a single consumer information/advice service. Consumer Direct is also a useful source of information to the regulator.

7. **The Government welcomes views on factors the Government or the CPMA may wish to consider in the event of a transfer of consumer credit regulation relating to how the overall level of consumer protection might best be retained or enhanced.**

The Consultation Paper talks about delivering an "at least equivalent" level of consumer protection. The Panel would argue that the aim should be for enhanced consumer protection, determining what might be equivalent carries risks of different standards and consequences applying in practice. In addition to retaining the protections contained in the CCA and the Consumer Credit Directive (CCD), the guidance provided by the OFT on credit related issues such as debt management and irresponsible lending guidance should be retained.

The enforcement powers and principles and some of the very useful guidance from general consumer protection provisions should also be imported such as the standards established in the consumer protection enforcement principles, defined causes of action and strict liability, and the detailed approach to unfairness.

A well-resourced, responsive, and pro-active local enforcement approach is a key factor in maintaining and enhancing the current level of consumer protection.

In addition the current CCA toolkit should be enhanced through:

- rule making powers to outlaw emerging unfair practices;
- redress powers and a s404 type power in terms of past practices
- a review of the level and type of sanctions available.

8. **The Government would welcome further evidence relating to:**

- **the use of consumer credit by small and medium sized enterprises (SMEs);**
- **whether the protections currently afforded by the CCA are appropriate and cover the right groups of businesses; and**
- **the costs and benefits of considering extending FSMA-style conduct of business rules to a wider group of SMEs.**

The consultation paper notes the significant problems – lack of coherence and strategic oversight - that arise from the artificial division of regulatory responsibilities for consumer credit and other retail financial services. Paragraph 1.17 reviews the problems that affect individuals and very small businesses but, in the Panel's opinion, the weaknesses are more wide ranging.

The Panel has drawn the FSA's attention to specific examples of potentially poor conduct in banks' lending to businesses, such as opaque pricing of business loans and aggressive demands for collateral. We have argued that the FSMA definition of "consumers" (Section 138 (7)) covers non-financial business consumers, who thus warrant protection under the FSA's Principles of Business. But the FSA has rejected our call for action, arguing that matters relating to non-FSA regulated lending fall under the jurisdiction of the Office of Fair Trading.

This response leaves exposed those non-financial businesses that are not given protection by the Consumer Credit Act, by competition policy or by redress mechanisms, such as the Financial Ombudsman Service. The resulting regulatory underlap is a matter of considerable concern: it is well known that small and medium-sized enterprises (SMEs) and larger "mid-capitalisation" companies that seek external finance are heavily reliant on banks.[5]

The Consumer Credit Act offers businesses protection but is narrow in scope. Only credit agreements up to £25,000 (and the equivalent for hire agreements) qualify and the provisions are limited to sole traders, unincorporated partnerships of up to three persons and other unincorporated bodies.[6] Although sole traders are the predominant legal form of business in the UK, they account for a comparatively small part of the business lending activities of banks.[7]

Competition policy alone may fail to provide effective protection against financial firms' abuse of their business customers. Market incentives may be misaligned, so that the simple promotion of competition makes things worse for consumers rather than better. Implementation of competition policy has also been subject to long delays, arising from policy-makers' inertia and the time required to analyse evolving market structures and devise remedies. [8]

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[5] " .. SMEs that do seek external finance are almost entirely reliant on banks, in the form of bank loans, overdrafts or other working capital products such as invoice discounting and factoring. …Mid-sized firms .. defined .. as having a turnover of £25 million to £500 million … tend to be largely reliant on banks for external finance". "Financing a Private Sector Recovery", Cm 7923, July 2010, HM Treasury and BIS, paragraphs 3.7, 3.11 and 3.12.

[7] According to a special BIS survey, the stock of loans by four major UK lenders to firms with an annual turnover of under £1 million was £35 billion in August 2009. (Table 1, "Trends in lending" October 2009, Bank of England). At that time, the money supply measure M4 stock of lending (including secured lending) to private non-financial corporations, unincorporated businesses and non-profit making institutions was £535 billion, data not seasonally adjusted, and £544 billion when the data are adjusted for seasonality and the effects of securitisations (Tables A4.1 and A4.3, "Bankstats", Bank of England, 1st March 2011).

[8] Cruickshank Report (2000),"Competition in UK Banking"; Competition Commission (2002), "A Report on the Supply of Banking Services by Clearing Banks to Small and Medium-Sized Enterprises within the UK", Cm 5319. Further evidence of a "complex oligopoly" is provided by Heffernan, S. (2003), "UK Bank Services for SMEs: Are they Competitively Priced?", Cass Business School, Faculty of Finance Working Paper.

Protection for disaffected business consumers of financial services is also offered by the possibility of redress through the Financial Ombudsman Service, but the protection is again limited to the smallest enterprises. So-called "micro-enterprises" can bring complaints to the ombudsman as long as they have an annual turnover of less than two million euros and fewer than ten employees. Sole traders and firms with fewer than ten employees comprise the vast majority of private sector enterprises in the UK, but account for only a fifth of private sector turnover.[9]

The Panel draws these conclusions:

- The protections afforded to very small businesses under the Consumer Credit Act need to be replicated should credit regulation move to the FSA.

- Despite its inherent disadvantages (cost, capture), conduct regulation is a necessary complement to effective competition policy.

- There exists a potentially large conduct regulatory underlap affecting medium-sized enterprises and mid-capitalisation non-financial businesses.

- In view of past ingrained habits and current statutory powers, it would be highly incautious to assume that the new financial conduct regulator would see such businesses as part of its consumer protection mission.

- Consideration should be given to an extension of the protections afforded by the Consumer Credit Act and the Financial Ombudsman Service to larger credit and hire agreements and larger businesses.

9. **The Government welcomes views on how consumer credit firms and consumers may be affected by the increased flexibility that could be provided by a rules-based regime.**

The Panel recognises that the FSMA regime does, in principle, offer capacity for greater flexibility than the Consumer Credit Act. However, in practice we have not always found this to be the case. Should credit be incorporated within a FSMA- style regime, the Panel would want to see the FSMA provisions applied in a more flexible, consumer-focused way than has sometimes been the case.

The Panel has, in the past, found the FSA's regulatory approach and the application of FSMA in some cases to be cautious, slow and unresponsive, with the FSA attributing this, in part, to the lack of scope and powers in FSMA. However we have noticed a considerable step-change in the regulation of in-credit retail banking services since the FSA took over direct regulation of this area from the self-regulated Banking Code in November

[9] Source: Department for Business Innovation & Skills (October 2009), "Small and Medium-sized Enterprises (SME) Statistics for the UK and Regions 2009". The turnover figures exclude financial intermediation.

2009, as we detailed in our report into the first year of FSA regulation of retail banking.

On the other hand, we have also recognised the considerable improvement in the FSA's willingness to intervene at an earlier stage where it identifies consumer detriment. Its desire to use the tools granted by FSMA to protect consumers has also risen following the financial crisis, while its enforcement remit has strengthened considerably.

The requirement, under normal circumstances, to conduct cost-benefit analysis and carry out full public consultations before making or amending rules or undertaking significant regulatory initiatives is time consuming and does not provide the regulator with either the flexibility or responsiveness to act in circumstances that require an immediate response. The Panel has previously expressed concerns about the quality of CBAs, the lengthy process, often focused on quantitative analyses without any real assessment of consumer benefits and social outcomes, and the potential for them to be subject to industry lobbying and influence. In particular, the FSA's cost benefit analyses have focussed much more heavily on the costs and benefits to industry rather than the financial and wider social benefits to consumers.

We welcome the proposed temporary product intervention powers for the new regulator and encourage these to be extended into the areas of mis-selling and unfairness.

10. **The Government welcomes views on the impact a FSMA-style supervisory approach may have in terms of ensuring effective and appropriate consumer protection.**

The Panel has been critical of the FSMA style supervisory approach in the past but recognise the current and proposed improvements in moving to a more conduct focused regulator prepared to intervene and more detailed prescription.[10] We applaud the FSA's new intent and support the new approach: to see it strengthened further, we want to see it linked to clear consumer outcomes and regular monitoring and reviewing. The approach may be able to effectively include credit but consultation and changed methods of enforcement, including enforcement at local level, would need to be part of any transfer.

11. **The Government welcomes views on the synergies afforded by the current regime in tackling problems associated with the sale of goods and services on credit, and how these might best be retained in the design of a new regime.**

The OFT oversees related consumer law and so has a broad perspective on consumer protection issues and standards. The application of standard consumer principles such as fitness for purpose and safety, strict liability provisions, and the use of market investigations, information gathering powers and consumer networks are all advantages of the current approach and overview.

[10] Hector Sants, Speech to the BBA Seminar on the Financial Conduct Authority, 2 March 2011.

The role of local trading standards services in taking referrals from Consumer Direct means that the full range of consumer protection tools can be applied in investigating consumer complaints about goods and services that may then result in enforcement action.

The provision for joint liability where there is a link between a credit agreement and a contract for the provision of goods or services is an important protection for consumers and supports the principle of a unified system of protection. It is particularly relevant in providing consumers security in internet and cross-border transactions.

12. **Do you agree that transferring consumer credit regulation to a FSMA-style regime to sit alongside other retail financial services regulation under the CPMA would support the Government's objectives (as outlined in paragraph 1.18 of Chapter 1)?**

**and**

13. **Are there other advantages or disadvantages that you consider could result from transferring consumer credit regulation to sit alongside that of other retail financial services?**

**and**

14. **Are there specific issues that you believe the Government should consider in assessing the merits of option 1? How could these be addressed in the design of a new regime as proposed in option 1?**

**and**

15. **If you do not agree with the Government's preferred option 1, do you have views on the factors set out in paragraph 2.4 that the Government should consider in determining the most appropriate regulatory authority for the CCA regime under option 2?**

As outlined above, the Consumer Panel is supportive of a unified regime which has real potential to overcome some of the current problems and provide better consumer protection. We feel strongly, however, that the new regime must offer at least the level of consumer protection afforded by the current CCA and associated consumer protection legislation. It will also be essential to assess how and whether an FCA of the type envisaged will be of a scale that is 'workable'. Ensuring a well resourced regulator which is fit for purpose, given its considerable remit, will be critical. We have also highlighted the importance of including a well-resourced, local intelligence and enforcement function within the new regime.

**Chapter 3 - Achieving a proportionate and effective regulatory approach**

16. **The Government welcomes views on the suitability of the provisions of a FSMA-style regime, such as those referred to in paragraph 3.6, to different categories of consumer credit business.**

The FSMA regime would have to adapt to the diversity of the credit market and the prevalence of small, local firms, especially within the sub-prime sector. In recognition of this, the Panel advocates a risk-based approach to

credit regulation within the new regime. This would combine a relationship-management approach to the regulation of lending activities by bigger, national firms operating largely in the mainstream, with a proactive local enforcement approach to the regulation of smaller enterprises and sub-prime lenders. Categorisation of credit suppliers to the different risk categories should be made on the basis of factors such as size, product offerings, and size of target customer groups.

21. **The Government welcomes views on the extent to which self-regulatory codes might continue to deal with aspects of lending to consumers and small and medium enterprises.**

The Consumer Panel's view is that self-regulation has failed to deliver the desirable consumer outcomes in other financial service areas, most notably in relation to the industry's oversight of the Banking Code.

Given the extraordinarily important economic and social role of banking and the lack of a consumer culture in the sector it is an area that should not be left to self-regulation.[11] Movement to a unified regime, where consumers understand what the rules are and where and how they are able to seek redress, should not logically leave aspects of the regulatory environment outside the scope of the regulator.

In the consumer credit market, the sheer number of firms regulated, and the very local scope of many of them, would make effective self-regulation an extremely difficult proposition.

Self- regulation should enhance consumer experience and not be a substitute for necessary consumer protection. While there are good examples of trade body codes of practice in the credit market, it should be remembered that membership is voluntary and less well intentioned or less competent businesses will either not join or will migrate to the more lax regime.

22. **Do you consider that there would be a case for deregulation of certain categories of consumer credit activity in the event of a transfer? Please explain why.**

The Consumer Panel is concerned at the potential for deregulation to reduce the degree of protection afforded to consumers.

## Chapter 4 – Implementation and transitional arrangements

24**.** **The Government welcomes views on how the treatment of agreements already in existence could be approached.**

We agree with the proposal that agreements already in existence and regulated currently under the CCA should be included in any transfer of consumer credit regulation to the FCA provided that the new regime delivered an at least equivalent level of protection for the consumer.

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[11] Financial Services Consumer Panel, Regulation of Retail Banking Conduct of Business, A review of the first year of the new regulatory framework, November 2010.