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

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Dear Nick,

CP15/6 – Consumer Credit – proposed changes to rules and guidance

This is the Financial Services Consumer Panel's response to the proposed changes to the Consumer Credit rules and guidance, set out in CP15/6.

Consumer Credit has proved to be a very challenging sector, both as a huge new area for the FCA, but also for the businesses involved who have already, and who continue to, face big changes.

The Panel has supported the FCA's work since it took over regulation of this regime in April 2014. As we outlined in our response to CP13/10, it was challenging to predict exactly how the market would develop or react to the new regime. We believed it was likely that certain firms operating in this area would seek new ways to circumvent the rules in order to maintain profit streams. We are therefore, particularly pleased that the FCA has kept the sector under review, adapting the regime accordingly. It is essential that the interests of consumers continue to drive this work.

<u>Credit broking</u>

The Consumer Panel supports the PS14/18 rules and the proposed amendment to the reporting requirements (questions 1 and 2). We have no comment to make on the proposed changes to the CONC rules on credit brokers (question 3).

However, we believe that additional rules are necessary in order to protect consumers who use credit brokers, many of whom will be vulnerable.

Where the broker charges a fee, the fee should not be excessive; it should be proportionate to the service being provided, and transparent to the consumer. The Panel also believes it is only appropriate for brokers to charge a fee to consumers once a credit agreement has been entered into. Fees should not be charged just for passing the consumer's details on to another credit provider (question 4).

<u>Lending issues</u>

The Panel is concerned about the rise in guarantor loans. There has been a rapid increase in this market, possibly due to payday lenders diversifying in light of new rules on HCSTC. Many consumers seeking guarantor loans will have limited, or no, access to other sources of credit. It is also likely that many guarantors do not understand the nature of their liability, believing they are simply providing a reference for the borrower.

This is borne out by recent statistics from StepChange[1], which show a rise in both the number and proportion of clients with debts to guarantor lenders. In 2014, almost 4,000 StepChange clients owed money to a guarantor lender, compared to fewer than 650 in 2012.

In light of this, the Panel does not feel that the FCA's proposals go far enough to protect vulnerable consumers. We support the proposals to require lenders to provide adequate pre-contractual explanations to guarantors and the requirement for the guarantor to be treated as a customer for the purposes of CONC 7.3.4R and Principle 6 (treating customers fairly). In addition, the Panel believes that guarantors should receive additional information post-contract, including annual statements and arrears notifications.

We note that banking law has established that third parties to lending contracts are required to obtain independent legal advice in order for guarantee arrangements to be enforceable. These proposals are considerably weaker than this.

In general, there should be a very limited role for guarantor loans in the consumer credit market. They may help some consumers with 'thin' or adverse credit files to borrow. However, if lenders are conducting appropriate affordability checks, it should be quite rare for them to call on guarantors. Where lenders regularly take money from guarantors, this would suggest they are not lending responsibly, and the FCA should take swift and decisive action against these firms.

The Panel remains concerned about the use of Continuous Payment Authorities (CPAs). Whilst it may be true that with a CPA, a failed payment does not result in bank charges, it can mean that other direct debits for rent or utilities are rejected leaving the consumer unable to pay for basic essentials. This has the potential to cause detriment to the most vulnerable.

Further, CPAs are not displayed, for example, through internet banking; often both the payee and the payment due date, can be unknown to the account holder. Banks should cancel a CPA at a customer's request, but many consumers are unaware of their right to cancel, nor how to go about doing so. It is not easy for the use of CPAs to be monitored; banks are not party to the CPA agreement, and volumes as well as misuse are not reported to, or monitored by, the FCA. Consequently, abuse of CPAs is hard to detect. The Panel does not see how the use of CPAs is in consumers' interests or is consistent with Principle 6. They appear only to benefit the creditor, and we would like to see the FCA asking some challenging questions about products for which CPAs are central to the business model. If firms cannot convince the FCA that the use of CPAs is in the interests of the customer they should not be used.

The Panel does not think it appropriate that CPAs are set up with the guarantor, as well as the borrower, at the outset of the loan. We also do not believe it is acceptable for lenders to remove money from a guarantor's account without prior warning as we believe that would not meet the requirements of Principle 6. Consumers should never be mandated to agree to a CPA if they would prefer the protections of a direct debit.

In addition to introducing new rules in relation to guarantor loans, the Panel would like to see the FCA taking a proactive role in monitoring and seeking intelligence on this market.

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1 http://www.stepchange.org/Portals/0/documents/media/reports/statisticsyearbooks/StepChangeDebtCharityStatisticsYearbook2014.pdf

Financial promotions

The Panel agrees with the high level principle that firms should be clear, fair and not misleading in financial promotions. Therefore we are pleased to see this guidance being elevated to a rule in the consumer credit market, consistent with the approach for mortgages. We also support the removal of the 'insufficient space' exemption on risk warnings.

However, the Panel still has concerns over why warning notices apply to HCSTC promotions only. A large number of 'payday' loan customers will have been excluded from mainstream credit due to credit card and loan defaults, etc. It is therefore essential to have warnings for all credit advertising so that consumers understand the risks wherever they borrow, and not just when the only credit they can access is high-cost short-term.

It is also important to remember that other forms of credit can be more expensive and harmful than HCSTC. Three-quarters of StepChange clients, for example, do not have a HCSTC product, their problem debt comes from other forms of credit. If the FCA believes risk warnings to be effective, it is irresponsible not to extend them to all forms of credit.

Debt issues

For the reasons outlined above, the Panel does not support the use of CPAs in this context.

The Mortgage Credit Directive

As stated in our response to CP 14/20[2] the Panel strongly supports the proposal to move second charge mortgage lending into the regulated mortgage regime. We acknowledge that second charge mortgages can be beneficial to consumers but we also believe that it is important consumers are aware of all of the options available to them, as well as the potential consequences.

Yours sincerely

Sue Lewis
Chair
Financial Services Consumer Panel

[2] http://www.fs-cp.org.uk/publications/pdf/cp_response_mortgage_directive_and_second_charge_lending_20141219.pdf