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

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Dear Oliver,

Credit card market study: consultation on persistent debt and earlier intervention remedies

This is the Financial Services Consumer Panel's response to CP17/10 on persistent credit card debt and earlier intervention remedies.

The FCA said in its Mission statement: 'the preferred approach is typically preventative – to stop bad things from happening in the future'. The proposals will not achieve this. The FCA's definition means that people in persistent debt are "typically paying approximately £2.50 in interest and charges for every pound of their balance they repay" on each account. This can go on for three years before the lender is required to take any real action, by which time the cardholder could be in debt on a number of cards, and with household bills. The long-awaited proposals on affordability testing, which might actually have a preventative impact, have failed to materialise.

It is extraordinary that the FCA put a price cap on high-cost short-term credit "to protect consumers from excessive charges" but does not even comment on whether paying £2.50 in interest and charges for every £1 capital repaid - over an extended period - is excessive or not. We continue to urge the FCA to adopt a consistent approach to regulation across all credit products.

We also urge the FCA to undertake a proper cost-benefit analysis, testing different time periods for intervention, and taking account of the wider costs of over-indebtedness.

We are concerned that credit card users in persistent debt may be 'punished' (in the form of an impaired credit file) for firms' irresponsible lending. The onus must be on providing borrowers with a safe route out of persistent debt, while ensuring that firms lend responsibly in the first place. Reducing the profitability of customers in persistent debt is the best way to make firms do this. Credit card companies continue to offer inappropriate products with unaffordable credit limits to consumers, and fees and charges are not always transparent and proportionate. While it is good that the FCA is tacking misleading 0% balance transfer offers, this is not enough. Firms bank on consumers breaching the terms and conditions, or being unable to repay at the end of the 0% period. They are so certain of this that they are able to book future profits from 0% deals. This is not Treating Customers Fairly (TCF), and we would like to know how the FCA will enforce TCF principles in this market.

The consultation paper makes no reference to multiple credit card holdings, which are a major cause of over-indebtedness. This is a serious omission: it is not clear how the FCA's proposals would work for someone in persistent debt across a number of cards.

While the FCA is not consulting on control over credit limit increases for new customers we believe the proposals outlined in paragraph 1.41 are over-complex and go against the general direction of travel in terms of clear and unambiguous informed consent, as set out in the General Data Protection Regulations (GDPR). We repeat our call for credit limit increases only to be granted if the customer explicitly requests one, and subject to a proper affordability test.

In addition to answering the consultation questions, we have provided a separate paper, outlining what we see as the drivers of over-indebtedness, and some suggested policy responses.

We would like to see:

- A meaningful increase in minimum repayment levels to ensure credit card debt is repaid faster. As firms acknowledge, credit cards are not intended as a longer-term borrowing vehicle;
- A requirement on lenders to develop systems to identify their financially fragile clients;
- Proper assessments of affordability, taking into account all forms of debt;
- The FCA to mandate that all firms report new lending commitments to credit reference agencies (CRAs) serving the UK market and share real-time data;
- The FCA to ban all unsolicited credit limit increases; and
- The FCA consult on whether there should be a ceiling for overall levels of unsecured borrowing by an individual, based on affordability.

Yours sincerely

Sue Lewis
Chair, Financial Services Consumer Panel

Responses to questions

Persistent debt

Q1: Do you agree with our proposed definition of persistent debt?

The principle is fine but the FCA has not justified the ratio of costs and charges to principal. This appears excessive by any reasonable definition. In any case, we believe that persistent debt should be recognised much sooner than at 18 months to reduce the costs that consumers pay.

We would like the FCA to take a consumer-centred approach to its remedy package, to ensure that all costs and payments are considered when determining whether a consumer is in persistent debt, rather than looking at each card in isolation. The FCA's own analysis shows that 51% of borrowers in persistent debt have two or more cards. StepChange reports[1] that a quarter of its clients have three or more cards and their average credit card debt is nearly £20,000. Moreover, levels of debt rise significantly the more cards people have.

We are also concerned about new spend on balance transfer cards. Transferring a balance onto a new card and continuing to spend on the old card may be an additional factor in unaffordable debt, and so the cost of balance transfer fees should also be considered. The FCA's own analysis for the credit card market study interim report showed that 29% of balance transfer accounts have not been repaid six months after the end of the promotional period. This can have a material effect on consumers' overall debt levels and repayment costs.

However persistent debt is defined, there is the risk that firms 'game' the system by encouraging borrowers to repay just enough to bring them out of scope of the new rules. As a result, these borrowers could end up paying just over minimum payments for many years – although in theory this could be prevented by firms' earlier interventions. We would like to hear from the FCA how it might prevent or minimise this type of 'gaming'.

Q2: Do you agree with our proposal for intervention at 18 and 27 months?

No. This is too late and far too costly for consumers in persistent debt, especially as, at the 18 and 27 month periods, the interventions are no more than prompts to the consumer to act.

Paying £2.50 in interest and charges for every £1 capital repaid is excessive, and the FCA has not justified why it believes this figure to be reasonable.

These interventions also place insufficient incentive on firms to lend responsibly in the first place because they continue to reap large profits from customers in persistent debt.

The FCA should undertake a proper cost-benefit analysis to determine the optimum intervention periods. This should take into account the loss to the economy resulting from the interest, fees and charges taken to service credit card debt. Both Citizens' Advice and StepChange have published evidence of the impact of over-indebtedness on the health and welfare of the over-indebted (and their partners and families, for example in the case of relationship breakdown). Again, this is not factored in.

If the FCA decides to retain the 18-month period, it should require firms to conduct a suitability assessment at month 18, and where appropriate switch consumers to a fixed-term loan at a lower interest rate to pay down their debt. By this stage, the credit card is no longer a flexible borrowing facility, but a *de facto* loan.

Q3: Do you agree with our proposals for intervention after 36 months of persistent debt for those customers that can afford to repay more quickly?

[1] http://www.stepchange.org/Mediacentre/Pressreleases/ResponsetoFCACreditCardMarketStudy.aspx

As we say above, we do not believe that consumers should pay excessive costs and charges for three years before firms are required to intervene. Action should be taken much sooner.

Q4: Do you agree that three to four years is a reasonable period over which firms must help customer repay the balance?

Yes, but the FCA should introduce a requirement for firms to freeze interest and charges, or at least bring them down to a level similar to that of a personal loan, once the intervention limits are met. The FCA's current plan will see consumers paying a card off for six or seven years in total.

Q5: Do you agree with our proposals regarding a requirement to exercise forbearance and due consideration for customers in persistent debt who cannot sustainably repay more quickly?

Yes. The FCA should set out clearly its expectations for firms' forbearance to ensure people are treated consistently. However, we maintain our position that credit card customers appear to be being treated very differently to customers of other high-cost credit.

Q6: Do you agree with our proposals regarding suspending use of the credit card?

Yes. However, for customers who are unable to afford the proposed repayments, we would also expect firms to freeze interest and charges at that stage. We would like clarity from the FCA on Credit Reference Agency (CRA) reporting of card suspension; debtors should not be 'punished' with an impaired credit rating for persistent debt when they have not breached their terms and conditions.

Q7: Do you agree with our proposals for customers who do not engage at 36 months?

Yes. However, as we say above, we do not believe that consumers should be left for three years before firms are required to help them repay their debt faster. The FCA should also introduce a requirement for firms to freeze interest and charges once the time limit is reached.

Q8: Do you have any views on the potential need for novation of existing contracts or modifying agreements in order to suspend or cancel customers' use of their card, provide forbearance or put in place a repayment plan?

It seems likely that novation will be required. See also our response to Q6.

Q9: Do you agree with our proposal that the firm must treat a customer with forbearance where the customer is unlikely to repay the balance in a reasonable period under a repayment arrangement?

Yes.

Q10: Do you agree with our proposals for commencement of the Handbook provisions?

Yes.

Q11: Do you agree with our proposals regarding overlap between persistent debt and earlier intervention and CONC 7.3.4R?

Yes. However, we don't believe that the earlier intervention rules have been working in practice. If they were, then the FCA would not have found such high numbers of consumers were either in arrears or had defaulted, or carrying a debt greater than 90%

of their credit limit for at least 12 months, or repeatedly making minimum payments on their credit card debt. The FCA should enforce this rule far more strongly.

Earlier intervention

Q12: Do you agree with our proposal to require credit card firms to monitor other data in addition to a customer's repayment record?

Yes. The systems used by lenders to assess creditworthiness should support the objective of identifying the financially fragile by creating a complete picture of borrowers' commitments. This view is supported by the NAO, which recommended that regulators and government should "more proactively explore options to enhance data-sharing that would allow better identification of, and support for, consumers in long-term or permanent vulnerable circumstances"[2]. The FCA should mandate that firms report all new lending commitments to all CRAs serving the UK market. Anomalies between different debt products also need to be removed, so that lenders of any debt product share real-time data with CRAs.

Q13: Do you agree firms should be required to take appropriate action where there are signs of actual or possible financial difficulties?

Yes. Firms should have been doing this already. There are significant numbers of consumers who may have been helped if firms had treated their customers fairly and monitored for signs of actual, or possible, financial difficulties.

Q14: Do you agree that signs of actual or possible financial difficulties should include where there is a significant risk of one of the matters in CONC 1.3.1G occurring?

Yes.

Q15: Do you agree with the proposed examples in guidance in CONC on what may constitute appropriate action where a customer is showing signs of actual or possible financial difficulties?

As we have said above, we believe many of the proposals do not go far enough. Consumers should not be left for three years before firms are required to intervene and far more should be done to identify and assist consumers who are showing signs of actual or possible financial difficulties.

[2] Vulnerable Consumers in Regulated Industries, National Audit Office, 31 March 2017

Appendix - Over-indebtedness: the drivers in the financial services market and the policy responses to prevent them

Introduction

In 2016, the Financial Conduct Authority completed a review of the Credit Card Market in the UK. It concluded that, while competition was working "fairly well" for most consumers, it was concerned about the scale, extent and nature of problem credit card debt. Further, it was concerned about the lack of incentives on firms to reduce this. The study identified over five million people in the UK as being either in arrears or having defaulted, or carrying a debt greater than 90% of their credit limit for at least 12 months, or were repeatedly making minimum payments on their credit card debt. Over 5 million accounts active in January 2015 would, on current repayment patterns, and assuming no further borrowing, take more than 10 years to pay off their balances[3]. It is the Panel's view that the FCA's principle of Treating Customers Fairly (TCF) has failed in the credit card market, and that the remedies proposed are insufficient to meet the requirements of that principle. A duty of care would be clearer and more effective.

In November 2016, the Bank of England issued a warning about the high level of debt in UK households, with consumers borrowing more on their credit cards and other unsecured debt[4]. In June 2017, the Bank of England's Stability Report found that consumer credit grew by 10.3% in the twelve months to April 2017 – markedly faster than nominal household income growth, with credit card debt growing rapidly[5].

The debt advice charity StepChange stated in its 2016 Year Book[6] that there was a record demand for its advice last year, with nearly 600,000 people contacting them for help – or one person every 53 seconds. The average debt of clients earning less than £30,000 increased by £569; to £12,897. The average debt of clients earning more than £30,000 stood at £29,340. For the first time in eight years, the overall average unsecured debt of its clients increased. On average in 2016, clients had 5.7 unsecured debts, including almost three credit cards. Overall, more than two-thirds of clients owed money on credit cards, and over half had overdraft debts. Only 16% of average debt was in the form of payday loans. In addition to unsecured credit commitments, four in ten people were behind on their household bills, adding to their debt burden.

In its recent report on vulnerable customers in regulated industries[7] (including water, energy, telecommunications and financial services sectors), the National Audit Office concluded that an estimated 8 million people are over-indebted, "with expected rises in household debt potentially putting further pressure on finances". It also found that the most common issue for consumers across the four industry sectors it examined was dealing with debt. Further, unexpected high charges, mis-selling and aggressive debt collection can lead to hardship and distress. This is particularly the case when individuals are struggling with a number of problems at the same time. Given that each individual regulator only has regard to the products and services within its own remit, it is extremely difficult to build a picture of the extent to which the actions or inactions of one sector or product group create wider consumer detriment. However, it is essential that we gather evidence to understand the drivers of over-indebtedness, and the role of credit in the financial services sector within those drivers, so that the regulator can make the appropriate intervention.

"People suffer financial distress when they face financial and non-financial difficulties from repaying their outstanding debts. Financial distress may mean that individuals file for bankruptcy or increase working hours, take on additional jobs, or reduce spending in order to meet repayments. Financial distress may also have wider non-financial effects,

[3] https://www.fca.org.uk/publications/market-studies/credit-card-market-study
[4] Financial Stability Report, Bank of England, 30 November 2016
[5] Financial Stability Report, Bank of England, 27 June 2017
[6] StepChange, 2016 Statistics Year Book
[7] Vulnerable Consumers in Regulated Industries, National Audit Office, 31 March 2017

such as stress, along with other forms of mental and physical distress or social stigma. Through missing repayments or persistently maintaining debt financial distress may also impede a person's future ability to access credit."[8]

High levels of indebtedness are correlated on average with higher risks of insolvency[9], bringing misery to consumers and damaging the economy. Over-indebtedness increases the risks of financial instability. The current situation therefore demands a policy response from regulators.

The Panel is proposing that the regulators of the UK financial services industry consider both ex ante and ex post interventions, to prevent over-lending and excessive risk-taking by banks, and to deliver a fairer allocation of credit risks between consumers and lender. The Panel believes this is the time for bold regulatory intervention to change firms' attitudes towards the financially fragile, in order to end the misery of over-indebtedness driven by debt built up on credit cards and improve the financial stability of the UK as a whole.

The causes of over-indebtedness

In the UK, over-indebtedness is defined as the situation in which a "household or an individual is in arrears, on a structural basis, or at a significant risk of getting into arrears on a structural basis[10]. The words "structural basis" suggest a long term problem with repaying debt, rather than a short term issue.

Driver 1: The number of credit commitments a household has

Research conducted by Civic Consulting, in cooperation with the Personal Finance Research Centre at the University of Bristol[11], found that the use of multiple unsecured credit products is positively associated with the likelihood of arrears. The greater the number of credit commitments households had, the more serious was the level of arrears. The total amount of money borrowed had much less effect. But a significant positive correlation was found between the level of consumer debt outstanding at the aggregate level and the frequency of arrears on hire purchase and other loans.

The researchers also cited previous research that supports the hypothesis that higher levels of outstanding consumer credit put households in a riskier financial position: they are more likely to have arrears on hire purchase or other loans, and arrears on utility bills. It is this wider picture of over-indebtedness that the financial services regulator might miss if their evidence gathering is limited to a single product or financial services products only.

In the FCA's Occasional Paper[12] researchers found that, using one method of measuring financial distress that combines both objective and subjective measures, 17% of people with outstanding consumer credit debts are in moderate to severe financial distress.

Further research[13] has shown that the more credit commitments a household has, and the larger the proportion of their income that went towards repayment, the more serious the level of arrears, where arrears include commitments such as utility bills and council tax. In the UK, compared with non-users of credit, the odds of arrears for those with one credit commitment was increased by a factor of 1.6, rising to 3.7 for those with 2 commitments, and 5.8 for those with 3 or more credit commitments. The FCA did not

[8] Gathergood and Guttman-Kenney, FCA Occasional Paper 20, "Can we predict which consumer credit users will suffer financial distress", published 3/8/2016, updated 17/2/2017
[9] Two Dimensions of Combating Over-Indebtedness – Consumer Protection and Financial Stability, Sylvain Bouyon, Roberto Musmeci, October 2016
[10] Oxera 2004.
[11] The over-indebtedness of European Households: updated mapping of the situation, nature and causes, effects and initiatives for alleviating its impact, Collard S., Finney A., Kempson E., 2014
[12] Gathergood and Guttman-Kenney, FCA Occasional Paper 20, "Can we predict which consumer credit users will suffer financial distress", published 3/8/2016, updated 17/2/2017
[13] Kempson E., McKay, S., Wilitts, M., Characteristics of families in debt and the nature of indebtedness, Department for Work and Pensions, 2004.

consider this evidence in its credit card credit card market study, so the extent of consumer detriment has not been fully examined.

Driver 2: higher and average interest credit

In the UK, regulated credit or loans with average interest rates were most frequently cited in research[14] as causes of over-indebtedness, in terms of the type of credit or loans taken out by over-indebted households. The most common types of credit were credit cards, overdrafts and bank loans, as well as credit with shops and mail order catalogues.

The research also found that high levels of borrowing are an important determinant of financial problems when an individual or household experiences an income fall. So, higher levels of borrowing increase household vulnerability to exogenous macro-economic shocks.

Driver 3: the ratio of unsecured debt to income and the level of mortgage income gearing

While there is no clear correlation between the level of indebtedness and frequency of arrears, research in the UK[15] has found that, although there is no clear point at which debt becomes problematic, there is a link between both the ratio of unsecured debt to income and the level of mortgage income gearing, leading to a higher probability of debt being a burden on households. The Bank of England has clearly recognized this interrelationship between the level of unsecured debt and mortgage debt, and its measures to control the activities of mortgage lenders are now well established. This finding is also consistent with research published by the ECB[16], which found that, all other things being equal, sharp rises in the debt ratio puts households in a riskier financial position.

The FCA research into the role of debt to income ratios[17] found that the 10% of people with the highest debt to income ratios are much more likely to suffer financial distress in the future than those with lower ratios. The type of debt is also important: individuals with the majority of their debt in higher cost products are much more likely to experience financial distress than individuals whose debts are mostly in other forms. They suggested there should be a role for affordability policies that take such factors into account. Citizens Advice estimates the ratio of unsecured household debt to income is set to reach between 20% and 24% by the first quarter of 2021, potentially surpassing the pre-banking crisis peak[18].

Driver 4: behavioural biases

Behavioural biases also come into play when examining the causes of over-indebtedness. Research for StepChange[19] found that households borrow when times are good, and increase their spending on credit even when this is outpaced by any actual earnings growth. They also exhibit “head in the sand” behaviours, such as using new credit to repay other credit, underestimating the amount of money owed, and failure to seek advice at an early stage. It has also been found across the EU that young people are particularly likely to have poor money management skills.

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[14] The over-indebtedness of European Households: updated mapping of the situation, nature and causes, effects and initiatives for alleviating its impact, Collard S., Finney A., Kempson E., 2014

[15] Gathergood and Guttman-Kenney, FCA Occasional Paper 20, “Can we predict which consumer credit users will suffer financial distress”, published 3/8/2016, updated 17/2/2017

[16] Rinaldi, L., and Sanchis-Arellano, A., Household debt sustainability – what explains household non-erforming loans? Working paper series no 570, European Central Bank, 2006.

[17] Gathergood and Guttman-Kenney, FCA Occasional Paper 20, “Can we predict which consumer credit users will suffer financial distress”, published 3/8/2016, updated 17/2/2017

[18] Citizens Advice, ”Unsecured and insecure? Exploring the UK’s mountain of unsecured personal debt – and how it affects people’s lives”, September 2015

[19] Collard, S., Finney, A., and Davies, S., Working households’ experiences of debt problems. Personal Finance Research Centre, Bristol, 2012

Research in the UK[20] found that young householders are at much higher risk of debt problems than students, but the latter seem to attract more attention than the former. The proportion of StepChange clients aged under 40 continues to grow. In 2016, they accounted for 60% of all clients advised, whereas five years previously they accounted for 52%. Analysis by Citizens Advice[21] found that young people "shoulder a disproportionate amount of unsecured debt in the UK". The under 35s make up 29% of the adult population, but hold 48% of the debt. Citizens Advice said, "the rate at which young people have been accumulating debt over the last few years is a cause for renewed concern. While the average level of debt grew by nearly 20% between 2006 and 2012, the debt of 15-24 year olds grew more than ten times faster (by 206%) over the same period".

Research by the Money Advice Trust[22] found that two thirds of 18 to 24 year olds have borrowed money from family and friends, borrowing an average of £2248 overall. A quarter of those questioned have borrowed from family and friends to pay for food, 15% to cover one or more rent payments, and 15% to cover travel costs.

Research for the FCA[23] also examined the characteristics of those in financial distress. They found them to be typically younger, with lower incomes, less likely to be employed and having higher debt-to-income ratios. They were also more likely to hold higher-cost credit products.

This psychological element is also discussed by Bouyon and Muscmeci[24]. They say that it is unrealistic to assume that households are fully aware of the risks related to financial products, that they are able to accurately predict all their life events and that they take the necessary measures to preserve the sustainability of their financial commitments. They add that a financial shock (a drop in income or increase in outgoings) catalyses the problem of over-indebtedness. But irresponsible lending acts as a complementary driver.

In conclusion, the interdependencies between different forms of debt, the aggregate levels of debt, and the possibilities of economic shocks caused by life events or changes to the macro-economic environment mean that policy makers need to take a much more holistic view of personal unsecured debt when considering the detriment caused by different products and effective interventions.

Possible Policy Responses

This market attracts some of the most vulnerable consumers, and effective regulatory interventions by the FCA are essential to prevent exploitation of the financially distressed.

However, current interventions are based on crystallised problems. An unwillingness to seek advice early means that, all too often, debt advice comes when consumers present with complex cases involving several creditors. The cost of resolving these cases is significantly higher than would be the case with early intervention. Early identification of those becoming over-indebted should benefit both consumers and firms, but only if product pricing is not designed to exploit the vulnerable.

The Panel is also concerned that those who do not seek help with their over-indebtedness could be lured into unauthorised lending. The NAO estimates that 310,000 people in the UK are currently borrowing money from illegal money lenders[25]. More

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[20] Collard, S., Young adults' credit decisions: A report to Capital One from the PFRC (University of Bristol), 2012

[21] Citizens Advice, "Unsecured and insecure? Exploring the UK's mountain of unsecured personal debt – and how it affects people's lives", September 2015

[22] Money Advice Trust, Borrowed Years – A spotlight briefing on young people and borrowing from family and friends, November 2016

[23] Gathergood and Guttman-Kenney, FCA Occasional Paper 20, "Can we predict which consumer credit users will suffer financial distress", published 3/8/2016, updated 17/2/2017

[24] Two Dimensions of Combating Over-Indebtedness – Consumer Protection and Financial Stability, Sylvain Bouyon, Roberto Musmeci.

[25] Vulnerable Consumers in Regulated Industries, National Audit Office, 31 March 2017

research is needed to understand the extent to which victims of loan sharks have first taken on debt provided by regulated lenders and exhausted regulated borrowing options.

Preventing over-lending in the first place, regulating pricing structures such that business models are not designed to profit from the misery caused by over-lending, and requiring much earlier identification of the "financially fragile" and effective intervention by firms would result in better outcomes for consumers.

The policy proposals below are intended to address these issues.

1. The definition of "over-indebtedness" in the UK refers to arrears. In the credit card market, the levels of minimum repayment are so low as to be meaningless. As long as minimum payments are made, a borrower is not "in arrears". As the research for the FCA's Credit Card Market Study shows, borrowers can carry high levels of debt on credit cards without being deemed to have problematic debts by their lenders. **Minimum repayments need to rise to a meaningful level to ensure credit card debt is repaid faster, and to identify earlier those who cannot keep up with payments**. **The FCA should undertake analysis to inform and identify possible options to achieve these objectives.**

2. In 2014, the French government enacted a Charter on Banking Inclusion and Over-Indebtedness Prevention. This requires lenders to design mechanisms for early detection of financially fragile customers, combined with an internal warning system. They must develop a specific device "allowing the detection of situations of financial hardship faced by their clients towards the contracted financial products… taking into consideration the profiles of their clients and their financial behaviour".

   The FCA should require lenders in the UK to develop systems that adequately identify their financially fragile clients. This might include a requirement for lenders to set up their own units dedicated to this activity, which would develop expertise and greater understanding of consumers likely to become over-indebted, and for these units to be trained to treat borrowers sensitively to encourage engagement. Consumers should not be penalised for taking action early to deal with their debt.

3. The FCA's proposed interventions to deal with 'persistent debt' are inadequate and place insufficient incentive on firms to lend responsibly. It is simply incredible that the FCA doesn't regard persistent debt – making minimum repayments and paying more in interest and charges than principal over two 18 month periods – as a sign of struggling. The FCA doesn't even comment on whether it believes the costs of carrying debt for this long – on average £2.50 in costs and charges for every £1 principal repaid – are excessive. **The FCA needs to be bolder and reduce the time limits. It should carry out a proper cost-benefits analysis, which models more ambitious timeframes for intervention, and looks at the wider costs and economic impact of 'persistent debt' and overindebtedness. It should also examine the role of credit card debt on the wider financial situation of the financially fragile, and introduce a requirement for firms to freeze interest and charges once the prescribed time limits are reached.**

4. Responsible lending requires a proper assessment of affordability, which examines the ability to repay. The Lending Code requires this of all lending. However, such affordability checks have not been carried out by credit card lenders who offer unsolicited credit increases on the basis of credit scoring alone. Credit risk tests protect the firm; affordability tests would protect the customer. The Panel considers firms' failure to carry out such affordability checks to be a failure of the FCA's principle to Treat Customers Fairly (TCF). **Affordability**

checks should be required across all forms of debt. The interdependencies identified earlier in this paper should be recognised in such affordability checks.

Credit card regulation in Australia

In Australia, credit licensees must comply with the responsible lending conduct obligations in Chapter 3 of the National Consumer Credit Protection Act 2009. The key concept is that credit licensees must not enter into a credit contract with a consumer, suggest a credit contract to a consumer or assist a consumer to apply for a credit contract if the credit contract is unsuitable for the consumer. RG 209 sets out the regulator's expectations for responsible lending:

"Meeting your responsible lending obligations will require taking three steps:

1. Make reasonable inquiries about the consumer's financial situation, and their requirements and objectives;
2. Take reasonable steps to verify the consumer's financial situation; and
3. Make a preliminary assessment (if you are providing credit assistance) or final assessment (if you are the credit provider) about whether the credit contract is 'not unsuitable' for the consumer (based on the inquiries and information obtained in the first two steps).

In addition, the 2017 Budget announced that credit cards will in future be subject to affordability assessments involving paying off the balance within a reasonable period; a ban on unsolicited offers (of new cards or increased credit limits); and banks must offer the opportunity to cancel the card or reduce the credit limit online.

5. The systems used by lenders to assess creditworthiness need to support the objective of identifying the financially fragile by creating a complete picture of borrowers' commitments. This view is supported by the NAO, which recommended that regulators and government should "more proactively explore options to enhance data-sharing that would allow better identification of, and support for, consumers in long-term or permanent vulnerable circumstances"[26]. **The FCA should mandate that all firms notify new lending commitments to all CRAs serving the UK market. Anomalies between different debt products also need to be removed so that all lenders, irrespective of the debt product they offer, share real-time data with Credit Reference Agencies to facilitate more accurate assessment of borrowing requests.**

6. The FCA has also announced voluntary remedies to give customers greater control over their credit limit. A 2016 StepChange survey of its clients seeking debt management advice found that 54% of those with credit cards had seen their limit increased without them asking for it. Of those, 40% said this had made their debt problems worse. The opt-in opt-out choices can easily be "gamed" by the industry, and consumers could be confused by the different choices on offer. The measure is over-complex, and goes against the general direction of travel in terms of clear and unambiguous informed consent, as set out in the General Data Protection Regulation issues by the Information Commissioner's Office. There is no consumer benefit to unsolicited credit limit increases, and the potential for considerable harm. **The FCA should follow the example of Australia and ban all unsolicited credit limit increases**.

[26] Vulnerable Consumers in Regulated Industries, National Audit Office, 31 March 2017

7. In the mortgage market, lenders know the amount of money a consumer has borrowed against their property, creating a ceiling for such borrowing for each consumer. It should not be possible for consumers to hold levels of credit card debt far in excess of their monthly disposable income, other than for very short time periods. **There needs to be a debate led by the FCA to establish whether a similar overall limit should apply to unsecured borrowing, and what that limit should be.**