

The regulation of consumer credit

Consumer Panel Position Paper

1. Panel position

- 1.1 The Government has been consulting on whether responsibility for regulating consumer credit should be retained by the Office of Fair Trading (OFT) or transferred to the new Financial Conduct Authority (FCA).
- 1.2 The Panel believes the overriding priority should be to increase consumer protection standards. We advocate transferring responsibility for regulating consumer credit to the FCA, initially under the Consumer Credit Act (CCA), but with an aim of reviewing whether transitioning to Financial Services and Markets Act (FSMA) style rules would be appropriate at a suitable time.

2. Background

- 2.1 The OFT is currently responsible for regulating the consumer credit market, and the conduct of the 96,000 firms that hold consumer credit licences, under the CCA.
- 2.2 In December 2010, HM Treasury (HMT) and the Department for Business Innovation and Skills (BIS) published a joint consultation looking at the future regulation of this sector. This outlined a preference to transition consumer credit regulation to a FSMA-style regime by transferring responsibility to the FCA.
- 2.3 The Panel has long argued that the FSA should be responsible for regulating unsecured credit provided by deposit takers. We consider the current position, whereby the responsibility for regulating retail banking activities depending on whether the consumer has a positive or negative account balance, to be unacceptable.
- 2.4 Although the Panel favours a unified regime under a single regulator, we are concerned that the benefits of regulating consumer credit under a FSMA-style regime may not be clear cut. In particular, we believe that valuable consumer protection standards could be lost by moving away from the CCA.

3. Consumer Panel research into the regulation of consumer credit

- 3.1 To gain a stronger understanding of the benefits and limitations of regulating the consumer credit market under either the CCA or FSMA-style regime, the Panel commissioned two projects:

- a comparative analysis of how the CCA is currently implemented and how a FSMA-style regime could work in the future; and
- an assessment of the protection offered to consumers under the CCA – including where it works and where it falls short – and the impact of a move to a FSMA-style regime.

3.2 The Panel has published both these reports alongside this Position Paper. These reports are available on the Consumer Panel's website.¹

4. The Panel's views

- 4.1 Both our projects highlight the valuable consumer protection mechanisms available under the CCA. This includes, for example, Section 40, 75 and 140 which ensure, among other things, that goods and services provided through the provision of credit are fit-for-purpose. Sections 129 and 136 also protect consumers who experience difficulties repaying any monies borrowed. It is essential that these consumer protection mechanisms are maintained and not undermined.
- 4.2 The Panel do not agree with the views expressed by some that the current regime is 'broken'. Indeed, in recent years we have seen a number of improvements in the current regulatory approach. This includes, for example, the publication of guidance to ensure firms understand the standards expected of them. However, further improvements are still needed and we are of the view that the FCA will be best placed to deliver these. In particular, we believe the FCA, with the benefit of economies of scale and engagement with the firms it currently regulates, will be able to take forward more effective enforcement work.
- 4.3 There are significant benefits attached to creating a single organisation responsible for the whole retail financial services market, encouraging a holistic and consistent regulatory approach which is aligned with the needs of consumers and ensures all firms are effectively supervised. The Panel feels strongly that this is the best structure for regulating the retail financial services sector in light of the changes proposed by the draft Financial Services Bill. The conduct of firms providing credit has a significant impact on the whole financial system. It is therefore sensible for the FCA to have responsibility for supervising the whole market, passing relevant information to both the Financial Policy Committee (FPC) and Prudential Regulation Authority (PRA), thereby enabling these organisations to fulfil their functions more effectively.
- 4.4 Due to the importance of retaining existing levels of consumer protection in the short-term, the Panel feels strongly 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.

¹ See: http://www.fs-cp.org.uk/publications/research_documents.shtml

- 4.5 The Panel recognises the significant challenges the FCA would face by operating under two very different regimes, but do not believe these are insurmountable. Indeed, we anticipate that it will be a far greater challenge for the FCA to transfer consumer credit regulation to a FSMA-style regime without first hand experience of regulating this market and the challenges it poses.
- 4.6 This dual structure would enable the FCA to gain valuable and essential experience of the consumer credit market by working closely with trading standards services which are critical to successful regulation of this sector. Building and maintaining close links with Trading Standards is one of the biggest challenges the FCA face as the FSA has not historically had a strong working relationship with them and are inexperienced in local level enforcement. Getting local enforcement right is crucial, irrespective of the regime under which the credit market is regulated.

5. Conclusion

- 5.1 With Parliament currently considering changes to the Financial Services Bill, this is an opportune time to create a strong single regulator responsible for the conduct of firms across the whole retail financial services market.
- 5.2 To ensure an orderly transition of responsibility, preserve existing levels of consumer protection and to give the FCA the best chance of success, we strongly advise against rushing to implement a FSMA-style regime for consumer credit regulation.
- 5.3 Enabling an orderly transfer of consumer credit to the FCA under the CCA regime, in the first instance, with the option of moving to a FSMA-style regime once the FCA is securely established and more experienced in credit regulation will, without doubt, provide the best outcomes for consumers in the short and long term.

Financial Services Consumer Panel

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