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against
poverty

CAP

Reform of the Consumer Credit Act

*CAP's official response to HM Treasury's consultation on the
reform of the Consumer Credit Act.*

December 2022

always hope.

Consumer Credit Act Consultation

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Summary

The removal of the Consumer Credit Act (CCA) is significant, as it means that creditors will be bound by rules instead of legislation. This could lead to consumer rights and protections being eroded as they will no longer be protected under law.

Further to this, there are some specific risks that are relevant to the debt advice sector. CAP believes that the following are the greatest risks, and explores each of these in the relevant questions.

- **Unfair relationships**
Firstly, there is a risk that people in debt will not be protected from unfair relationships with creditors. The CCA legislation has the power to make certain contract terms void, but the FCA rules would not be able to replicate this.
- **New credit providers entering the market**
There is a risk of an increase in new credit providers entering the market. The consultation appears to encourage 'innovation' in the sector by making it easier for new entrants to offer credit. The consultation also discusses making it easier for people with poor financial literacy to access credit. This poses a risk to consumers as deregulation could mean that people end up taking out credit agreements they can't afford to repay. This issue could be compounded by the loss of protection from the 'unfair relationships provision'. With the FCA taking a strong stance on vulnerability over the last few years, ensuring consumers are protected needs to be at the heart of any changes to legislation.
- **The ability to terminate hire purchase agreements**
This is a significant issue for the debt advice sector, as terminating an unaffordable hire purchase agreement often helps our clients to stabilise their financial situation before accessing a suitable debt solution. It can also save them hundreds or thousands of pounds in unaffordable repayments.
- **Potential loss of Time Orders**
Finally, we risk losing Time Orders as a solution for helping clients with their debts. The Time Order is a tool which can be used to help people stay in their property if they have an unaffordable mortgage or secured loan. In the current cost of living crisis there is a risk of an increase in home repossessions if the Time Order is not retained.

In light of these risks, CAP presents the following response to the Consumer Credit Act consultation.

Questions

Question 1: Do you agree with these proposed principles, and do you have views about tensions between them or relative prioritisation?

In examining the principles for reform, CAP is keen to ensure that consumer rights remain protected. CAP agrees that simplifying the regulation and creating alignment is positive for businesses and organisations, including our own. However, there is a significant risk that some of the protections of the CCA will be completely lost when they are recast to FCA rules. CAP has reservations with the proposal to remove the CCA and would like to see HM Treasury ensure that consumer protections and rights remain central to any changes made.

If there is a move towards principle based regulation, there needs to be provision for consumers and debt advisors to be able to recognise when a firm is operating outside the spirit of the rules. Any simplification should provide clear guidance to creditors on what they can and cannot do. This should be backed up by effective enforcement if creditors do not act fairly towards consumers. Failure to do this could result in creditors taking advantage of the fact that consumer rights are no longer protected in legislation. In essence, any simplification should not be at the expense of protecting the consumer from unfair practice in the industry.

Further to the simplification of the regulations, CAP has concerns about the 'forwarding-looking' principle. While CAP agrees that businesses should be allowed to innovate, there is a concern about the risks to vulnerable customers. For example, a loophole in the current legislation has led to the rapid growth of 'Buy Now Pay Later' agreements entering the market. These short term credit agreements are offered to consumers without performing affordability checks. CAP welcomes the FCA's latest consultation on regulation of Buy Now Pay Later products. Removing the CCA could increase the number of firms exploiting loopholes in rules or legislation. While the FCA places a strong emphasis on protecting vulnerable customers, removing the CCA would mean that there would be no provision for 'unfair relationships' in law when these new products enter the market. This means that customers could find it very difficult to challenge contracts in court where the terms were unjust. Therefore, any scope for increased innovation should be balanced with the need to protect consumers from harm.

Question 11: If other consumer protection legislation, rules and/or guidance, outside of the CCA, falls short of replicating the effect of the provisions in the CCA, where do these gaps exist and how significant are they?

The CCA gives customers in financial difficulty protection in three key areas; the termination of hire purchase agreements, accessing Time Orders, and exiting 'unfair relationships' with creditors. The fact that these areas are not replicated in the

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current FCA guidance is a significant risk to clients in financial difficulty. Without these protections clients may find themselves unable to exit contracts which are either unfair or unaffordable. In some cases, the inability to access a Time Order could mean that homeowners are faced with repossession despite the fact that they could afford to repay their mortgage over a longer term. Allowing consumers to exit contracts which are no longer meeting their needs is essential as it ensures that they can stabilise their financial situation without the need to go through insolvency.

Question 14: Are there any rights and protections provisions which you feel should not be moved to FCA rules and should remain in legislation? Please provide an explanation of why you hold these views.

Removing CCA legislation would present a significant risk for consumers in taking away the 'unfair relationships' provision. CAP believes it is critical that customers retain the ability to ask the court to review the fairness and make changes to credit agreements and terms as necessary. The benefits of the CCA and court involvement are that decisions can be made by trained legal professionals on a case by case basis, rather than trying to create an exhaustive set of rules to legislate for every scenario. Giving the court the power and flexibility to scrutinise individual agreements and change them to ensure fair outcomes is critical. Removing that channel to access justice and resolution for customers would be a major step backwards in justice and fairness for all types of credit. In light of this, the flexibility and breadth of the CCA unfair relationship provisions should be retained in legislation. This will enable the court to make decisions which are appropriate to individual circumstances.

In addition to the unfair relationships provision, both the ability to cancel hire purchase agreements and the existence of Time Orders should be retained in law. These provisions are critical for individuals who find themselves in financial difficulty as they make it possible to cancel or amend agreements which are unfair or unaffordable. While creditors may have to wait longer to receive their money, the provisions provide an alternative to more extreme measures of debt resolution such as insolvency. CAP discusses these issues further in the responses to Questions 15 and 16.

Question 15: Given this, to what extent do Time Orders provide additional protections to these rules and guidance? What evidence are you aware of that the existence of this right changes firm behaviour and improves consumer outcomes?

As consumers grapple with increased living costs, CAP argues that it is essential to retain Time Orders to protect homeowners with a mortgage. The Ministry of Justice have recently published statistics to show that mortgage possession claims are up

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23%, mortgage orders for possession are up 50%, warrants issued are up 88% and repossessions are up 134% compared to the same quarter in 2021. While these statistics can be partly explained by delays in creditor action during the COVID 19 pandemic, they demonstrate the precarious situation many homeowners find themselves in during the current cost of living crisis. With interest rates increasing at an alarming rate, there needs to be an effective mechanism for homeowners to renegotiate the terms of their mortgage. While creditors should abide by FCA guidelines to treat customers in arrears fairly, a legal option needs to be made available to help people stay in their homes.

It is true to say that Time Orders are not frequently used by CAP or other debt advice charities. However, our debt advisors cite that this is because of the complexity and length of Time Order applications rather than a lack of demand. Our advisors do come across cases with subprime mortgages and unaffordable secured loans where a Time Order would be useful. However, due to limited resources it has not been possible for us to submit an application on behalf of the client. This appears to be an issue across the debt advice sector and not just CAP. This evidence suggests that the current legislation should be simplified rather than removed so that consumers can continue to access a legal remedy for unaffordable loan agreements.

In order to enable consumers to make use of Time Orders, the application process should be made more accessible and straightforward. This would enable consumers to apply to court themselves without the need to pay expensive solicitor fees. As part of any reform, courts should be given more power to deal with unaffordable secured loan agreements. For example, by simplifying and combining the unfair relationships provision with Time Orders. This would mean that whatever the application or situation, the court would be able to take into account unfairness and make changes to credit agreements. These changes would help to provide the best outcome for consumers in their individual circumstances. For homeowners, this reform could go a long way in helping individuals to maintain their mortgage payments and stay in their homes at a time when interest rates are sharply rising.

Question 16: What is your view on the usefulness of the right to voluntary termination and its role in protecting consumers? Are there improvements that could be made to the functioning of this right?

The right to voluntary termination is a useful provision for people who end up in financial difficulty, especially due to a change of circumstances. CAP regularly suggests it to our clients when their Hire Purchase is no longer affordable. It may have been affordable when it was taken out, but due to a change of circumstance it is not viable to maintain this form of credit. The fact that consumers can return vehicles after repaying 50% means the change of circumstances doesn't leave them with debt that they can't afford and may actually no longer need. It protects

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consumers by allowing them to limit their liability to a reasonable amount, and save a significant amount on otherwise unaffordable debt. Allowing consumers to exit contracts which are no longer meeting their needs is essential as it can enable them to stabilise their financial situation.

There is a risk that if the Act is removed, people could end up paying much more than they can afford for a vehicle when they could either get a cheaper alternative elsewhere or manage without. There is also a risk of the consumer attempting to continue payments to the hire purchase to the detriment of other things, both essential expenditure and other credit.

Even within the current Act, there could be further improvements to the way a consumer must express their desire for a voluntary termination, and better acceptance from the firm that this is a viable option. It could also be made clearer to consumers that this is an option, and at what point this option becomes available.

Question 17: To what extent do the FSMA and FOS regimes make the unfair relationship provisions unnecessary? If these provisions are to be kept in legislation, with other rights and protections moving to FCA rules, does this create more complexity and confusion for lenders and borrowers and what will the effect on innovation in the sector be?

The judiciary across the UK exists to arbitrate between disputing parties on legal matters. The CCA's inclusion of the judiciary in arbitration has been both effective at a broad level and essential for fairness at an individual level. In order for customers to receive the same protections and provisions from Financial Ombudsman Service (FOS), FOS would need to have powers to make changes to the full range of credit agreements included in the CCA Time Order provisions. There would also have to be safeguards in place to ensure FOS were working as fairly and effectively as the courts have been. Also, to ensure FOS was as equally impartial and fair as the courts, additional appeals processes would be needed to mirror those found in the judiciary.

The upcoming Consumer Duty from the FCA will go some way to replicating the unfair relationships provision, but we are yet to see how this works in practice. Additionally, it changes the focus from consumer focussed individual rights to penalising the firm. Although this does have longer term advantages, it doesn't provide immediate relief for the consumer.

We would like to see the unfair relationship provisions remain, and although having some legislation to look at alongside different FCA rules may create more complexity, it would provide a good balance of individual protection and regulation for firms. The onus shouldn't be on consumers to understand the complexities, but

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they can have a general understanding of the fact that they are both individually protected, and that the market itself is correctly monitored and governed.

Alongside this, innovation in the sector should still be stringent in their approach to providing credit. Without legislation, we may see new companies exploiting loopholes in the FCA guidelines in order to make a profit. Having both legislation and rules encourages innovation in the right places, as well as protection.

Question 25: How can this reform ensure that firms provide information to consumers which is accessible for a wide range of financial literacy and numeracy levels?

Moving information notices into the FCA rules instead of the CCA makes it possible to be more flexible on wording, which could allow for better inclusion of those with different financial literacy and numeracy levels. Pre-contractual information could be presented in a way that is easier for clients to understand; but there is a risk some key information could still be unclear or missing.

Firms should be allowed some adaptable decision making to tailor communication to the individual needs of consumers.

There is a risk that increasing access to those with low financial literacy and numeracy means there may be more people taking out credit they can't afford. Consideration would need to be given to the effect of this, and we would encourage clear recording of client needs and preferences, vulnerability training, specific teams where necessary and good escalation processes within firms.

Question 26: In what ways should this reform ensure that consumers' mental health and wellbeing is supported throughout the consumer credit product lifecycle?

Any reform to the Consumer Credit Act should ensure that consumers' mental health is taken into account during the consumer credit product lifecycle. A key aspect of promoting mental health is to ensure that consumers are well informed and understand each stage of the debt collection process. Further to this, consumers with severe and/or diagnosed mental health conditions should be specially protected from exploitative or unfair credit practices. In light of this, CAP supports the proposal to move information notices into the FCA rules instead of legislation but wants to see the 'unfair relationships' provision retained.

Firstly, CAP agrees that simplifying information notices will benefit consumers. Removing requirements from the CCA and making them part of the FCA guidelines could be positive for consumers' mental health. The current information notices are

unnecessarily wordy, making it difficult for consumers to engage with. Despite this, it is critical that consumers are given the correct information before entering into an agreement and are updated at each stage of enforcement. The current proposals suggest that precontractual information requirements could be reduced, including a removal of the requirement to include representative examples in advertising. The proposals also suggest changes to post-contractual communication with consumers, such as removing the requirement to send out letters for missed payments after a specific time period has elapsed. Both of these proposals present a risk to consumers' mental health. Individuals could feel that they were not adequately informed before taking out credit and find themselves with unaffordable loan repayments. In addition to this, there could be less engagement from consumers when they miss payments, making them unaware of the seriousness of their situation. In light of these arguments, any changes to information notices should not leave consumers in a situation where they are less informed about the credit agreements they are entering into.

Further to this, provision should be made for individuals with a severe and/or diagnosable mental health condition. Retaining the 'unfair relationships' provision would be a benefit to consumers with mental health conditions. Any changes to the Consumer Credit Act should make it easier for debts to be disputed and liability to be challenged where customers' mental health was a significant factor impacting decision making, understanding, and/or ability to repay throughout the product life cycle. The reason for this is because the court would be able to determine whether or not the client's specific needs were taken into account during the credit process. While the FCA Consumer Duty goes some way in ensuring positive outcomes for customers, legislation sends a stronger message in stopping exploitative practice.

Background

The Consumer Credit Act (CCA) has been around since 1974. It provides details of individual rights and protections across the consumer credit industry, in legislation. In 2013, the Treasury and the (then) Department for Business, Innovation and Skills (BIS) published a joint consultation on transferring consumer credit regulation from the Office of Fair Trading (OFT) to the FCA. A conclusion was made that, wherever possible, consumer credit regulation should be set out in rules rather than legislation to allow for greater flexibility and regulatory coherence. Since 2014, the FCA and CCA have overlapped somewhat in remit and aims. In light of this, the [Consumer Credit Act consultation](#) aims to assess whether or not CCA legislation can be removed and incorporated into the regulatory framework of the FCA.

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About Christians Against Poverty (CAP)

With a vision to see transformed lives, thriving churches and an end to UK poverty, Christians Against Poverty (CAP UK) is a national charity that equips local churches to deliver a range of services.

CAP Debt Help provides holistic support for families and individuals facing problem debt with a free face-to-face service – tackling both the financial conundrum and the wider emotional impact. CAP tackles the causes and consequences of UK poverty through free community groups, also run through local churches.

All CAP's services are free of charge and available to everyone, regardless of age, gender, faith and background. To find out more, visit capuk.org.

Requests for further information

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