



HM Treasury call for information on Reforming the Consumer Credit Act 1974

Response to be sent to public.enquiries@hmtreasury.gov.uk by 17 March 2023.

This response is being sent on behalf of The Chartered Trading Standards Institute and has been compiled by Jemma Cox, CTSI Lead Officer for Civil Law.

ABOUT CTSI

Founded in 1881 (as the 'Incorporated Society of Inspectors of Weights and Measures'), today's Chartered Trading Standards Institute (CTSI) is one of the world's longest-established organisations dedicated to the field of Trading Standards and Consumer Protection. And, after more than 140 years of progress, we remain immensely proud of our close association with the Trading Standards profession and the vital work it continues to do – promoting fair business practices, tackling rogue traders and, ultimately, protecting UK consumers.

At CTSI and through the trading standards profession we aim to promote good trading practices and to protect consumers. We strive to foster a strong vibrant economy by safeguarding the health, safety and wellbeing of citizens through empowering consumers, encouraging honest business, and targeting rogue practices.

We provide information, guidance and evidence-based policy advice to support local and national stakeholders including central and devolved governments. CTSI is responsible for business advice and education in the area of trading standards and consumer protection legislation, including running the Business Companion service to provide clear guidance to businesses on how to meet their legal and regulatory obligations. CTSI is also responsible for the Consumer Codes Approval Scheme which facilitates high principles of assisted self-regulation through strict codes of trading practice. This ensures consumers can have confidence when they buy from members of an approved scheme and also raises the standards of trading of all businesses that operate under the relevant sector's approved code.

We run training and development events for both the trading standards profession and a growing number of external organisations. We also provide accredited courses on regulations and enforcement

CONSULTATION RESPONSE

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

No comments.

Question 2: Noting the governments' Net-Zero targets, how can CCA reform remove barriers that may otherwise prevent lenders from being able to offer financing for renewable energy solutions, such as electric vehicles and green home improvements?

Although we support the removal of any unnecessary barriers for businesses who trade honestly, legally and fairly, there are issues relating to mis-selling and fraud in the renewable energy solutions sector by businesses who do not trade fairly and legally. The removal of any barriers to trade also need to be carefully weighed up to ensure they do not lessen consumer protection and lead to further illegal practices in this area, which impact upon consumers and legitimate businesses.

Question 3: Are there any existing definitions or concepts in the CCA which should be updated and clarified when moved to FCA rules?

No comments.

Question 4: Are there concepts in the CCA which are not currently defined but which should be?

No comments.

Question 5: Do you believe the business lending scope of the CCA should be changed?

No comments.

Question 6: Do you support the conclusion of the Retained Provisions Report that most Information Requirements could be replaced by FCA rules without adversely affecting the appropriate degree of consumer protection, and that it is desirable to do so? Are there any additional factors the government should consider given the context changes since the report's publication in 2019?

No comments.

Question 7: In what circumstances is it important that the form, content and timing of pre-contractual and post-contractual information provided to consumers is mandated and prescribed? What are the risks to providing lenders more flexibility in this area?

Having a consistent approach to the form, content and timing of pre-contractual and post-contractual information is very important for a number of reasons and we would support the retention of mandatory requirements in this area. Credit can be a complex area for consumers and the consequences of have a more flexible approach is likely to make the information more complicated for consumers to locate and understand. Having a more flexible approach also means that educating consumers on what to look out for in agreements, which are already complex, would present an even bigger challenge. As stated in 4.13 of the report, there is good evidence to support the benefits that a mandatory and prescribed information requirement bring to consumers.

In relation to businesses, having a mandatory and prescribed list of information reduces the 'grey areas' and makes it easier for businesses and regulators to know whether the information requirements have been met. The consistency in information to consumers may also make it easier for consumers to find the information they need, which would reduce unnecessary queries. Introducing more flexibility may also lead to businesses interpreting this flexibility to suit their needs, and this could create unfairness in the sector and more monitoring that is also needed in this sector.

In other areas of consumer protection, such as under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, there is prescribed pre-contract information

that has to be supplied for all contracts that are not exempt. Although financial contracts are one of these exemptions, we raise this example to show that in other areas where there are contracts between businesses and consumers, certain information is mandatory. Therefore, considering the complexity and importance of these contracts, we would support mandatory information requirements to be prescribed and mandatory, to ensure consumers are equally afforded this protection in financial contracts.

However, we would welcome flexibility to ensure that the form that the information is supplied in, reflects the changes in modern technology and reflects the way that consumers now enter into these types of contracts.

Question 8: The Consumer Understanding outcome in the Consumer Duty posits that consumers should be given the information they need, at the right time, and presented in a way they can understand it. Does the implementation of this section, and the Consumer Duty more broadly, go some way to substitute the need for prescription in CCA information requirements?

Although the Consumer Duty is welcomed by CTSI, as outlined in Question 6, we would support the information requirements remaining in legislation, to ensure parity with other areas of consumer law and to support a consistent and clear requirement which is easier for consumers and businesses to understand and follow.

Question 9: Given the increasing using of smartphones and other mobile devices to take out credit products how can consumer information be delivered on devices in a way that sufficiently engages consumers whilst ensuring they receive all necessary information?

We welcome this consideration, as we acknowledge that the way businesses engage with consumers needs to reflect their purchasing habits which are now, more than ever, involving the use of mobile devices when purchasing goods and services. Ensuring that the relevant, prescribed information is given in the correct format needs further consideration when comparing a written paper contract in comparison to viewing the information via a mobile device. The font, size, layout, navigation pane/panel, colour of the wording may all impact the engagement of a consumer with the information supplied. Ensuring the information is appropriately spaced out and laid out in a way that is easy to navigate and clear to read on a mobile device would be a really important consideration, to encourage consumer engagement. Also, ensuring that consumers do not have to click through to too many different pages/links, which can lead to confusion and add unnecessary barriers to the consumer accessing the information that they need in order to make an informed decision about the agreement (if pre-contract) or to find information they are looking for (post-contract).

Technology could also be used to obtain engagement from a consumer with the document, such as by requiring the consumer to scroll down the document or proactively agreeing with sections as they work through the document, to encourage engagement. If there is a tick box or click through button at the end, consumers will often do this without engaging with a document. However, we also recognise that these considerations must be weighed against any additional costs to businesses and to ensure a fair balance is struck.

Question 10: Are there any areas where, in your view, consumer protection legislation, rules and/or guidance, outside of the CCA, makes for appropriate levels of consumer protections and mirrors or replicates the effects of the provisions in the CCA?

Many of the Sections of the Consumer Credit Act are not replicated in other consumer protection legislation as set out in 5.23 of the report, particularly provisions such as Section 75 and 56. We

would therefore strongly advocate that these provisions are maintained, to ensure that consumer detriment does not arise as a result of their weakening. We therefore support them being retained in legislation.

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?

This question has been addressed in our answer to Question 10 and we believe that there are gaps, and they would be significant gaps for the protection of consumer's if these provisions were removed. Consumer confidence in the marketplace is important for our economy and legitimate business alike, and weakening consumer protection measures in this area could undermine consumer confidence.

Question 12: The FCA's Consumer Duty mandates a consumer support outcome. How does the Consumer Duty interact with the rights and protections provided to consumers in the specific consumer credit regulatory regime, which currently consists of the CCA and FCA rules?

CTSI welcome the FCA's Consumer Duty and see it as a very positive duty to have. However, as it is a new duty, it is unclear how this duty will interact with the rights and protections provided to consumers in practice. As outlined in our answers to previous questions, the FCA rules cannot replace legislative protections for consumers and the provision of consistency for businesses. Therefore, we see the Consumer Duty as sitting alongside and complementing the legislative provisions, rather than replacing the key provisions. Moving any of the key consumer protection provisions to FCA rules would lead to a weakening in consumer protection and would not enable consumers to take action.

Question 13: If it is possible to amend the FCA's FSMA rule-making power to enable FCA rules to replicate the effect of rights and protections currently in the CCA, what is your view on the risks and benefits of doing this?

As mentioned in our previous answers and in the report, FCA rules cannot replace the consumer protection legislative provisions such as Section 75 and 56 of the CCA, and those listed in 5.23 of the report. Therefore, this is not possible for some of the provisions and we would therefore advocate that they are retained in legislation. Attempting to change these provisions to FCA rules would significantly reduce consumer protection and would leave large gaps in consumer protection, which poses a large amount of risk to consumers.

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.

As outlined in Question 10 above, many of the consumer protection provisions, such as Section 75 and 56 cannot be replicated by FCA rules. These provisions need to be retained in legislation to give consumer's the ability to take a cause of action under them when required, which they would not be able to do if the legislation was not retained. As mentioned in the report, these rights cannot be replicated in the FCA rules and the removal of any of these important protections would significantly weaken protection for consumers, which we would strongly advocate against.

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?

No comments.

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?

No comments.

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?

As stated in the report, these provisions are well recognised by the courts and offer important protections for consumers. Many of the consumer protection provisions in the CCA cannot be replicated by FCA rules and so we do not believe that retaining this provision would cause more complexity and confusion, as existing lenders are already familiar with these provisions and borrowers would have to refer to the CCA for other protections that they have. Therefore, to ensure these provisions are not weakened, they should be retained in legislation.

Question 18: Would you be supportive of HM Treasury exploring the option of amending FSMA rule-making powers in such a way to enable unenforceability to apply to breaches of FCA rules in a similar manner to how unenforceability applies under the CCA, noting there would not be a role for court action in this scenario?

No comments.

Question 19: Do you agree that the government should consider the proportionality of sanctions and ensure that they are relative to the consumer harm caused/potentially caused?

We support the government approach of considering the proportionality and harm/potential harm caused when considering the most appropriate sanctions. However, we also would advocate that any proposed changes to sanctions are consulted upon, to ensure a full review of the proportionality and harm caused/potentially caused can be properly ascertained.

Question 20: What types of breaches of CCA rules do you think that sanctions should attach themselves to and why? For example, should the disentitlement sanction be limited to the small sub-set of cases giving rise to unenforceability, where there is the greatest risk of harm?

Treating consumers fairly and transparently is at the heart of consumer protection and therefore breaches of rules relating to unfairness, misleading practices, omissions of important information, lack of transparency etc. should have sanctions, due to the impact that these practices can have on a consumer's decision to enter into a contract or to exercise a right they may have under the contract.

Question 21: How valuable are the CCA provisions that give rise to a criminal offence? (See Annex 2 for list of CCA provisions that give rise to criminal offences)

Provisions relating to minors are important to retain as an enforcement backstop, if the other overlapping protections afforded by FCA fail. Retaining these provisions as offences, send a clear deterrent message in relation to the protection of minors. This is particularly important with the new ways that younger people tend to enter into contracts via social media applications and online, using devices such as their mobile phones or tablets. Industries that are attractive to young people, such

as the clothing industry often offer finance deals and these criminal provisions provide an enforcement mechanism and deterrent for businesses who may consider targeting minors.

The criminal provisions in relation to credit reference agencies, particularly failing to update or removed incorrect information for a consumer's credit file, can also have a detrimental impact for consumers. We would support the retention of these protections.

Question 22: Are there are any provisions that are outdated because the practices they pertain to are not used anymore, or would removing some CCA provisions lead to the return of these practices?

No comments.

Question 23: What is your view on the merits in increasing the standards of conduct for consumer hire agreements to make them comparable to those for consumer credit?

We believe there is significant benefit in making the standards of conduct for hire agreements comparable to those for consumer credit. This simplifies things for both businesses and consumers.

Question 24: Should the section 17 provisions which enable exemptions from specific elements of the CCA and CONC continue to exist? What would be the impact of these provisions not applying?

No comments.

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?

It is positive to see that these factors are being considered in this consultation. Our answer for question 9 touches on some considerations that are relevant to this question.

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

Engagement with mental health and well-being charities and advice services that deal with debt advice should be undertaken as part of this reform, to ensure that these issues are considered and implemented into the review.

Question 27: What are the key considerations that the government need to take into account when reforming the CCA 70 to ensure that Sharia compliant loans can be expressly accommodated? Which areas of the CCA are not currently compatible with Islamic Finance, and how could they be amended to accommodate Sharia compliant loans?

No comments – would our Equality and Diversity group have any thoughts?

Question 28: If interest rates are prohibited for Islamic Finance products, how does the government ensure that Islamic finance and non-Islamic finance products can be easily compared, given that APR values are used for comparative purposes?

No comments – would our Equality and Diversity group have any thoughts on this?

Question 29: Are you aware of any implications of our policy approach on people with protected characteristics?

No comments – would our Equality and Diversity group have any thoughts on this?

Question 30: Do you have any views on how the government can mitigate any disproportionate impacts on protected characteristics?

No comments – would our Equality and Diversity group have any thoughts on this?

FOR FURTHER INFORMATION

CTSI is happy to work with HM Treasury and other agencies and contribute to work in this area in order to protect consumers and protect reputable businesses.

Please contact Duncan Stephenson, Director of External Affairs for further information (duncans@tsi.org.uk or 07557 229 774)