



Chartered Trading  
Standards Institute

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# Review of the Retained Provisions of the Consumer Credit Act

Financial Conduct Authority consultation

Chartered Trading Standards Institute response

May 2016

## **About The Chartered Trading Standards Institute**

The Chartered Trading Standards Institute (CTSI) is a professional membership association founded in 1881. It represents trading standards officers and associated personnel working in the UK and also overseas – in the business and consumer sectors as well as in local and central government.

The Institute aims to promote and protect the success of a modern vibrant economy and to safeguard the health, safety and wellbeing of citizens by empowering consumers, encouraging honest business, and targeting rogue traders.

We provide information, evidence, and policy advice to support local and national stakeholders.

We have also, as part of our recently revised remit, taken over responsibility for business advice and education concerning trading standards and consumer protection legislation. To this end, we have developed the Business Companion website ( [www.businesscompanion.info](http://www.businesscompanion.info) ).

The CTSI Consumer Codes Approval Scheme was launched in 2013, superseding the OFT scheme ( [www.tradingstandards.uk/advice/ConsumerCodes.cfm](http://www.tradingstandards.uk/advice/ConsumerCodes.cfm) ).

CTSI is a member of the Consumer Protection Partnership, set up by central government to bring about better coordination, intelligence sharing and identification of future consumer issues within the consumer protection arena.

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

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***A key concern for CTSI is that of resources. UK local authority trading standards services enforce over 250 pieces of legislation in a wide variety of areas. They have suffered an average reduction of 40% in their budgets since 2010 and staff numbers have fallen by 50% in the same period.***

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This response has been composed by CTSI Lead Officer for Civil Law, David Sanders. Should you have any queries or wish to discuss the response please do not hesitate to contact David at [locivillaw@tsi.org.uk](mailto:locivillaw@tsi.org.uk)

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## Review of Retained Provisions of the Consumer Credit Act 1974

The Chartered trading Standards Institute welcomes the opportunity to comment on the Consumer Credit Act 1974 and what remains of a vital part of its tool kit in protecting consumers.

Whilst the UK remains within the European Community, Local Government and thus local authority trading standards have a vital and hugely significant role in addressing the EU's Confident Consumer Agenda. Local Authorities, through education and economic development, deliver policies designed to make more consumers "Confident Consumers". Trading standards have a significant enforcement role that protects both legitimate trade, and consumers, from fraudulent and unscrupulous traders who would take advantage of them.

We consider the role of trading standards services and CTSI to extend further than just enforcement as we are also actively involved in this policy arena with people of all ages. The service has a toolkit that contains a broad range of statutory duties that equip us to contribute to the health of the nation and in particular, promoting confidence in consumers. Some of the common factors found in less confident or vulnerable consumers include debt and poor nutrition, and being able to address these issues within local communities has been the cornerstone of this profession for many years and CTSI wishes it to remain so.

We have actively been involved in consumer education, and for around 30 years have run the Young Consumer of the Year Competition (YCOY) that contains a specialist round on consumer credit. We are also involved with partners in financial inclusion policies. We work with debt counsellors on loan sharking and other illegal practices, and have access to specialist illegal moneylending units. Our enforcement powers also allow us to monitor high street shops buying and selling gold. For the whole period we have had enforcement responsibilities under the Consumer Credit Act 1974 we have actively campaigned for reform of the legislation, especially regarding Bills of Sale Acts.

There are many market place factors that highlight, not only the need for regulation of consumer credit, but also that the law should keep pace with marketplace changes. The financial crisis in 2008 not only created many difficulties for banks and traditional lending methods but also promoted innovation in the lending markets. The increase in peer-to-peer schemes with which you are currently wrestling indicates this. The high street today has four times the number of dealers buying gold from consumers, realising their assets, out of desperation. The assay offices have seen the amount of precious metals recycled for smelting increase by up to twentyfold. Debt counsellors are struggling to cope with demand on their services. Bills of Sale, of which there are still in excess 50,000 registered each year, are increasingly being used for their original purpose. That is to say, to allow businessmen to raise money against chattels without parting with possession. This form of lending is now likely to be reformed rather than abolished, which CTSI have longed campaigned for. This leaves Bills of Sale available for consumer finance which has proved so problematic in the past.

CTSI's position remains that hire purchase was only created after a 19<sup>th</sup> century legal blunder jeopardised the 'reservation-of-title' clause in conditional sale agreements. It was a further attack on the 'reservation-of-title' clause in the 1964 Hire Purchase Act that led to the reintroduction of the obsolete Bills of Sale Acts for second hand car purchases. Hence our position is for the reform of the consumer credit market as a whole, and retaining local enforcement as a vital resource in local financial inclusion policies. Whilst remaining within the European Union, we as a nation retain the duty to comply with the Consumer Credit Directive (Directive 2008/48/EC on Credit agreements for consumers) as from 12<sup>th</sup> May 2012.

In responding to this consultation CTSI do so from the perspective of what we believe will provide the greater consumer protection and thus encourage more confidence amongst consumers.

**Q1: Do you agree that the review should focus on particular retained CCA provisions?**

Accepting that it is within your remit to review those provisions with which you are associated CTSI do think the review should regard those provisions within the context of the credit market of today.

**Q2: What should be the main criteria for prioritising provisions for review?**

If there is to be prioritisation then those matters that directly affect consumers should be prioritised. For example the 1974 Act was amended by the 2006 Act to provide (inter alia) power to the Court to reopen a credit bargain where it was unfair to the consumer. One reason why CTSI hope for updated legislation is due to anomalies in the law on different types of agreement. For example, a debtor with outstanding finance on a second hand car is better protected under conditional sale or hire purchase than under Bills of Sale legislation. If provision was equalised, a debtor would not have his car repossessed under a Bills of Sale agreement without a Court order. He would then have access to the 2006 Act additional remedy. In comparison, at present the car would be repossessed and put into a car auction before he is able to act.

**Q3: Are there particular provisions that you would include or exclude from reviewing, and why?**

No

**Q4: Do you agree that the review should not extend more broadly, other than where necessary?**

For the reasons previously stated CTSI believe this appears to be a chance to improve consumer protection through simpler and clearer provision of the legal controls on credit

**Q5: Do you have any further thoughts on the scope of the review?**

The CTSI position is summarised in the preamble.

**Q6: Do you have any views on timescales for the review?**

There is a pressing need for reform in this area as the 1974 Act is 42 years old and failed to embrace all the recommendations of the Crowther Report even then.

**Q7: Are there particular provisions that you believe should be considered for earlier review, and why?**

CTSI believe the position of the consumer, particularly the vulnerable consumer, should drive the discussions. After that the enforcement process should be modernised. The only sanctions back in 1974 were prosecution or revocation. Today, the civil process is much more in evidence and offers distinct advantages. For example, an interim injunction does allow for a problem to be brought before the Court in a shorter timescale. This then allows the Court to use their powers to do justice to the consumer and provide redress.

**Q8: Do you have any views on the proposed conduct of the review and engagement with stakeholders?**

Whatever the chosen direction the review takes, CTSI as an enforcement partner, would be pleased to be engaged in that review.