Department for Business, Innovation and Skills and HM Treasury

A new approach to financial regulation: consultation on reforming the consumer credit regime

A Response by Credit Action

Background

Credit Action is a national money education charity (registered Charity in England & Wales No. 1106941) established in 1994.

In January 2009 we also created our dedicated Welsh arm, Credit Action Cymru.

We offer a range of resources, tools and training to help everybody handle their money well, and to inform consumers so that they can make informed decisions about their personal finances.

Credit Action operates at a national level through advocacy, collaboration and partnerships with various groups and companies as well as at a local level through a variety of targeted projects, with a particular emphasis on those most vulnerable to financial difficulties and over-indebtedness. Through its work Credit Action reaches over 650,000 UK citizens every year.

We try and help as many people as possible avoid the pain of debt. However we recognise many contacting us will be in trouble already, so we work in partnership with the major debt counselling charity the Consumer Credit Counselling Service (Registered Charity No. 1016630).

Opening Comments

As an organisation which is strongly committed to supporting consumers and addressing issues of detriment, Credit Action takes a keen interest in regulatory matters. We also have a number of current members of staff who have previously worked as professional debt advisers, and have therefore been licensed under the terms of the Consumer Credit Act. Consequently, we are eager to contribute to the current consultation on reforming the regulation of consumer credit, as we feel this is an issue which is of considerable importance to ensuring that consumers are adequately protected and have a clear understanding of their rights.

In this response we have focused on two of the central questions in the consultation – Questions 1 and 12 – which concern our assessment of the existing consumer credit regime and our views of the Government's proposals for change. While we believe that the Government's current plans to reform the existing regulatory system are undoubtedly motivated by a strong desire to put consumers first, we feel that the Consumer Credit Act has generally worked effectively and that the scale of the transition proposed has the potential to create difficulties for credit providers, debt advisers and consumers. For this reason, of the two options put forward in paragraph 2.3 of the consultation we would currently support Option 2, under which the Consumer Credit Act would remain in place.

Question 1: Do you agree with this assessment of the consumer credit market?

We understand that Government has a number of concerns regarding the current operation of the Consumer Credit Act as outlined in paragraph 1.17 of the consultation, and recognise that some anomalies do exist in the current system – the regulatory split between current accounts and overdrafts (mentioned several times in the consultation including in paragraph 2.6) is one of the most significant of these from our perspective.

However we feel that the Government's analysis overlooks many of the benefits of maintaining the current consumer credit regime. The fact that the Consumer Credit Act is well established means that all stakeholders – including credit providers and debt advisers (the latter being especially important from our perspective) – are able to operate in an environment of relative certainty with respect to the Act's terms and jurisdiction (even given its specific complexities, with regard for example to overdrafts). The value of this should not be underestimated, and the impact that transferring to a new and, in the context of consumer credit, unfamiliar regime is something we are very wary of. In order to justify making a transition of this magnitude, we feel that there needs to be a clear and compelling argument to show that the existing system is causing significant and immediate detriment to consumers. At present, we question whether this is the case.

We do not pretend that the Consumer Credit Act is perfect (indeed, it is important to recognise that no regulatory regime is), and there are undoubtedly anomalies. However, on balance we do not feel that the existing imperfections in the regime justify its complete removal. Ultimately, we remain to be convinced that there is an urgent case for fundamental reform of the regulatory system, which in our opinion generally works effectively.

Furthermore, we also feel that the potential for the proposed reform to actually enhance consumer detriment is something that requires further consideration.

We note that the Impact Assessment produced alongside the consultation (BIS0132) states that at this stage 'it is not possible to know whether the aggregate net burden of compliance for firms [under the proposed new regime] will be positive (i.e. a net increase) or negative (i.e. a net reduction)'. As the precise impact the proposed reforms would have on firms is currently unclear, we are concerned that the risks associated with transition may not yet be fully understood.

The Impact Assessment goes on to consider the possible problems which might be caused if there is an increase in compliance burden leading to market exit, which 'could lead to consumer detriment through reduced choice of suppliers and have an adverse impact on innovation and use of illegal lenders', as well as firms passing on the 'increased cost to consumers in the form of higher prices' (p. 2). These are two outcomes that we would find particularly alarming.

We of course recognise that Government is statutorily obliged to identify the potential risks posed by any policy, and do not read these risks as necessarily inevitable. However, the point being made is that as the compliance burden is not fully quantified, the level of risk of market exit cannot be judged with much certainty. Consequently, we feel that the possibility of significant consumer detriment occurring is something that requires deeper reflection.

As a final point, we would stress that the impact of any transition on the debt advice sector, which is also subject to regulation under the Consumer Credit Act, is particularly important from our point of view. If any regulatory shift were to take place then we would at the very least like to see a rigorous cost-benefit analysis of the specific impact on the debt advice sector taking place first.

Question 12: Do you agree that transferring consumer credit regulation to a FSMA-style regime to sit alongside other retail financial services regulation under the CPMA would support the Government's objectives (as outlined in paragraph 1.18 of Chapter 1)?

We recognise that Government's preference for Option 1 is driven by a strong desire to provide a regulatory structure which protects consumers whilst imposing a proportionate burden on firms, and that this underpins the four key objectives outlined in paragraph 1.18 of:

- Clarity, coherence and improved market oversight
- Effective and appropriate consumer protection, including through a responsive and flexible framework
- Simplification and deregulation
- Proportionality and cost effectiveness

However, further to our response to Question 1, we would suggest that certain aspects of the proposed new regime may undermine efforts to meet these objectives to at least some extent.

In terms of providing "Clarity, coherence and improved market oversight", we recognise that Government's central concern within this objective is to remove some of the inconsistencies present within the existing regulatory structure, but would reiterate the fact that we are wary of the effect that a shift of this scale will have on the certainty with which key stakeholders are able to operate. While the reforms aim to enhance clarity, we fear that the immediate impact of the change will be disruptive to some degree, and that this has the potential to impact on consumers, providers and advisers.

Furthermore, the remaining three objectives all contain aims which may be impacted by the uncertainty over the compliance burden on firms which we have already referred to. Providing "Effective and appropriate consumer protection" may be undermined to some degree if market exit takes place and creates conditions in which consumer detriment is enhanced. Meanwhile, both the "Simplification and deregulation" and "Proportionality and cost effectiveness" strands aim to some extent to reduce the burden on firms, which, on the basis of the Impact Assessment, is not something that can necessarily be guaranteed at this stage. Therefore, we would question whether the proposed shift to a new regulatory regime will currently meet all the Government's objectives in full.

Overall, we feel that there are still outstanding issues concerning the potential regulatory transition outlined in Option 1, and that the scale of the change has the potential to create problems. Therefore, of the two options put forward in the consultation, we would prefer to follow Option 2 at this stage and maintain the Consumer Credit Act.

Contact

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