

Office of Fair Trading

Power to suspend consumer credit licences – Draft OFT guidance for licence holders

A Response by Credit Action

Background

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

Credit Action empowers people across the UK to build the skills, knowledge, attitudes and behaviours, to make the most of their money throughout their lives. It develops and delivers products and services which provide education, information and advice on money matters, in an appropriate way for young people and adults. Through its work Credit Action reaches over 500,000 UK citizens every year.

Introduction

As an organisation, Credit Action is committed to helping both young people and adults build their financial capability, and develop the skills necessary to manage their money effectively. In our view, a fair and well-functioning market is crucial to enabling consumers to make the best use of these skills, and to ensuring that they are able to make financial decisions in an informed and objective manner.

The power to suspend consumer credit licences with immediate effect is a highly significant one, and if used effectively we believe it could have a tremendously positive impact on the market by enabling the OFT to limit the impact of rogue operators. Equally, we realise that such power must be utilised responsibly and transparently. Consequently, it is vital that the conditions under which the power will be used are appropriate, and also clearly understood by firms and consumers. We therefore welcome the opportunity to contribute to the OFT's consultation on its draft guidance for the suspension of consumer credit licences.

In general we are very supportive of the draft guidance, both in principle and in terms of the language that has been proposed. We feel that it is largely clear and well communicated, and that if implemented it has the potential to create substantial benefits for consumers. However, there are some specific places in which we believe the draft guidance could be improved, in order to enhance the clarity around certain points. In order to address these particular issues, we have focused on answering questions 4, 5, 8, 9 and 10 in our response.

Question 4: Are the case studies and the rationale for the decisions clear?

By and large we believe that the case studies outlined in the draft guidance are clear, and help provide an understanding of the rationale underpinning a decision to suspend or not to suspend (in particular, we feel that Example 4 is useful in illustrating when a case would not pass the "urgently necessary" test).

The one exception to this however is Example 1, where we feel more clarity around the exact timescale of the suspension would be beneficial. The case study outlines a situation, apparently under the existing licencing regime, in which the Local Authority Trading Standards Service (LATSS) contacts a business on several occasions regarding unfair practices, following which the business is found in contempt of court and issued with an Interim Enforcement Order, before finally being made subject to a Final Enforcement Order. The example suggests that under the current regime, the OFT would only commence revocation action when the Final Enforcement Order is issued.

The Example then suggests that under the new system, a suspension notice would be issued and that "in this case suspension would most likely have been considered when LATSS had to re-approach the business". Given the complexity of the Example, and the number of stages that the case passes through, the moment in the case study when LATSS re-approached the business was not immediately clear to us, and we felt some further detail may have been useful to help the reader pin this down more easily. Our assumption is that this refers to a point ten months after the initial

contact when LATSS writes to the business about 20 new complaints – if this is the case, we feel the guidance could be quite easily amended to improve clarity, and for example be re-written to read “in this case suspension would most likely have been considered when LATSS had to re-approach the business, ten months after the initial contact”.

Question 5: Do you consider there are any significant omissions particularly in respect of the circumstances in which you would expect to see the OFT suspend a licence with immediate effect?

Paragraphs 3.11 to 3.13 are the other part of section 3 in which we believe more detail may be necessary. These discuss the OFT’s S34A powers, referring specifically to circumstances in which a licensee may be temporarily permitted to trade after a suspension notice has been issued in order to facilitate an orderly winding up of the business.

In particular, we can envisage a situation arising in which it may be beneficial to a business’ customers for an orderly winding up to take place, but that the risk posed by the behaviour of the licensee is such that the OFT judges an immediate suspension is warranted. In this case, we assume that the prospective benefits of utilising the S34A power would be overridden by the need for immediate suspension.

If circumstances such as these were to arise, we are unclear as to what processes would be put in place to protect customers who might be adversely affected if the business could not be wound up in an orderly fashion. We therefore believe it would be helpful if the guidance ultimately included more information on what would happen in this situation, how the issue would be communicated to consumers, and what sort of role the OFT itself would be expected to perform.

Indeed, in our view communicating with consumers about the suspension and its consequences is prospectively one area in which the OFT might need to become directly involved, as there is no guarantee that a business subject to the suspension will have the means or the inclination to inform its customers about what is going on. We note that paragraph 4.18 of the draft guidance states that the OFT “may issue press notices concerning the suspension if we consider that it helps the performance of our functions [to protect the interests of consumers] to do so”, and believe that it would be appropriate for the OFT to undertake such press activity if the circumstances outlined here arose.

Question 8: Is the guidance clear on representations and appeals mechanisms?

In terms of the representations process, we feel that there could be greater clarity in the guidance in certain areas, particularly concerning how the submission of a representation will impact on the timeframe for administering a suspension.

Paragraph 4.15 estimates that the representations process as a whole will last approximately one month, from the initial issue of the notice through to the adjudicator’s final decision. However, there is currently no explicit confirmation of whether or not suspensions will only come into effect after

the representations process is resolved, or if they can become active while the representation process is still taking place. We believe that this has the potential to create a degree of confusion amongst firms and consumers, and would like to see this addressed in the final guidance. We would make two specific points with respect to this.

Firstly, the draft guidance suggests that in most cases, suspensions will take effect on a date specified in the notice, and that this “will provide the licensee with a short period to make representations to an OFT adjudicator for a reconsideration of the suspension before it comes into effect” (paragraph 4.11). At the moment, this could be interpreted in several ways. For example, it could imply that the date of the suspension will always be set so that it does not come into effect until at least 21 days after the notice was issued (the prescribed window for submitting representations). Alternatively, it could mean that the date of the suspension will always be set so it does not come into effect until at least a month after the notice was issued (the estimated overall duration of the representations process). Equally, the guidance could be read as giving the OFT complete discretion over suspension dates, allowing suspensions to come into effect before the conclusion of either the 21 day submission window or the representations process as a whole.

We assume that the latter position is the one which the draft guidance is trying to outline, and that the OFT would not want to put any formal limits on when it sets suspension dates. However, if this is the case then we do feel that it needs to be explicitly stated in the guidance. Ultimately, we feel that there is a need for much greater clarity in this area, in order to eliminate any potential for confusion or for licensees to contest suspension dates on the grounds that the guidance is unclear.

Our second point concerns immediate suspensions. The draft guidance states that “only in rare cases – where the harm which would be prevented by immediate suspension is particularly grave, would a licence be suspended with immediate effect and representations would be invited after the suspension has come into effect” (paragraph 4.11). Our assumption, on the basis of this part of the draft guidance, is that if an immediate suspension is applied, representations can still be made within the 21 day period, but will have no effect on the suspension itself, which will continue until the adjudicator has made a decision on whether to revoke or confirm the suspension, and prospectively through to the end of the appeals process when a final decision is made on the status of the licence.

Once again however, if this is the case then in our view it would be helpful for this to be stated explicitly within the guidance. In particular, we feel it would be important to establish clearly that the submission of a representation during the 21 day window would not lead to an immediate suspension being lifted.

If our assumption is misplaced though, and submission of a representation within the 21 days could lead to an immediate suspension being lifted, then we feel much more information will be necessary, including details of what steps the OFT will take to mitigate the prospective risk to consumers.

Ultimately, even if our reading of this section of the draft guidance is correct, we feel that it is important to point out that the lack of explicit confirmation on certain points has the potential to

create confusion, although (provided we have interpreted the draft guidance properly) addressing this would only require a few relatively small amendments to clarify the position. However, if our reading of this part of the guidance is wrong, then some much broader issues would be raised, particularly in the case of immediate suspensions – not only would much more detail be required, as suggested, but we also feel there would be implications for the points addressed in Questions 9 and 10, as we discuss below.

Question 9: What is your opinion of the time it will take for decisions to be made once representations have been made?

Providing that we have interpreted the draft guidance correctly, and the submission of representations will not lead to suspensions (particularly immediate suspensions) being lifted, then we are comfortable with the suggested timescale for decisions.

However, as suggested in our response to question 8, if our reading of the guidance is wrong and the submission of a representation during the 21 day window could lead to an immediate suspension being lifted, we would have significant concerns, as a licensee that was judged by the OFT to pose a serious risk to consumers would prospectively still be allowed to trade. In this instance, we believe that the suggested timescale for making decisions (prospectively 14 days from the receipt of the final representation, as outlined in paragraph 4.15) would be too long, as it would allow a potentially dangerous operator to continue engaging with customers for up to a fortnight, and believe it would need to be reduced as far as possible.

Question 10: An alternative to issuing a detailed record of the adjudicator’s reconsideration of the decision within two weeks of representations is the option of a short (skeleton) record provided in a quicker timeline. What would be your thoughts/preferences on this as an option?

Once again, if we have interpreted the guidance correctly, we have no problem with the adjudicator issuing a detailed record of the reconsideration decision up to 14 days after the receipt of the final representation.

However, if the submission of representations could lead to an immediate suspension being lifted, and a prospectively dangerous licensee being allowed to continue to trade, we would be in favour of a shorter skeleton record being provided in a quicker timeline, in order to ensure the case was resolved as quickly as possible.

Contact

For further information on any of the points made in this response, please contact John Davies at Credit Action, either by email at [johndavies@creditaction.org.uk](mailto: johndavies@creditaction.org.uk) or by telephone on 0207 380 3390.