The Money Charity response to the FCA Review of the Retained Provisions of the Consumer Credit Act (Oct 2018)

The Money Charity is the UK's leading financial capability charity.

We believe that being on top of your money means you are more in control of your life, your finances and your debts, reducing stress and hardship. And that being on top of your money increases your wellbeing, helps you achieve your goals and live a happier more positive life as a result.

Our vision is for everyone to be on top of their money as a part of everyday life. So, we empower people across the UK to build the skills, knowledge, attitudes and behaviours, to make the most of their money throughout their lives.

We believe financially capable people are on top of and make the most of their money in five key areas:

- Planning (including budgeting)
- Saving
- Debt
- Financial services products
- Everyday money (including wages, cash, bank accounts)

The Money Charity (TMC) welcomes the opportunity to comment on the FCA's Review of the Retained Provisions of the Consumer Credit Act. Overall, we agree with the approach taken by the FCA paper and its conclusion that most of the rights and remedies set out in the Act should remain in the Act rather than being transferred into FCA rules. We set out our reasons below, along with several caveats and suggestions we would like the FCA to consider.

1. Recognition of consumer credit rights in a financial education context.

Acts of Parliament have a much longer history, and higher popular recognition, than FCA rules. There is widespread understanding in UK society of what it means to have a statutory right, whereas the financial regulatory system is more recent and mutable and has lower popular recognition. Clarity of context is important in understanding consumer credit rights.

Without detracting from the importance of any other right, one provision we would particularly like to mention is section 75 connected lender liability.[1] This is a widely known and effective right which we are keen to see retained in statute. We think this right should be extended to all transactions completed via digital payments services such as PayPal. The rationale is the same as explained in paragraph 5.37 of the FCA review document:[2] that it would give consumers confidence to buy from unknown suppliers, or online from abroad, and encourage the development of the digital payments market. The present situation can be confusing for consumers as they can lose the protection of section 75 while using their credit card, when they pay a digital intermediary instead of the provider direct.

2. Parliament is the right place to consider changes to consumer credit law.

When rights derive from an Act of Parliament, to revoke or amend them requires parliamentary consideration. This is a thorough process of several stages, including clause by clause scrutiny by committees and parliament as a whole. The full experience and knowledge of MPs in both houses can be brought to this process, including the day-to-day experience of MPs in dealing with consumer credit issues in their constituent surgeries. In addition, many MPs have a legal background and can bring this to bear on the bills they are required to consider.

Consumer credit rights are important rights, entering into the daily life of a large proportion of the UK population. Were these rights to be changed into FCA rules, they could become subject to lobbying for change on a more-or-less continuous basis by

[1] For example, this gives a consumer who has bought something with a credit card the right to pursue a claim against their credit card provider if there is a breach of contract by the supplier firm.
[2] FCA, *Review of retained provisions of the Consumer Credit Act Interim Report,* DP18/7, August 2018, p 31.

those in the financial community who seek lower consumer protections or greater deregulation. No doubt the FCA would consult on any proposed changes, but consumer groups and charities would find it hard to keep up, due to their limited resources. FCA consultation, important though it is, would not have the same effect as full parliamentary consideration of any proposed changes to consumer protection. The balance of power would shift toward financial firms and better-resourced industry bodies.

As one of the resource-constrained charities that would be asked to submit to any FCA review of consumer credit rules, we express a preference for fundamental consumer rights remaining in statute, so that full parliamentary scrutiny will apply to any proposed changes.

3. Enforcement of rights needs to be as automatic as possible

We agree with the analysis in the FCA paper that sanctions should be retained in statute, particularly the sanction that if the CCA provisions are not followed, credit contracts or particular terms within them become invalid. The automaticity of this approach is a great asset, particularly in view of the size of the consumer credit sector, which consists of several thousand firms.

Were the FCA to take over responsibility for enforcing these provisions, a resource and prioritisation question would inevitably arise. It would not be possible to take action on every complaint and some sort of threshold would need to apply. A proportion of consumers would miss out on the protections they formerly enjoyed under the Act. When the FCA threshold became known, a further dilution of compliance could take place, leading to a general deterioration in the application of consumer credit rules. Consumers would become confused about what rights they had, or didn't have, and the overall situation would become murky.

This is an outcome to be avoided.

4. Moving rules on information requirements to the FCA

We note that in places the FCA has proposed moving information requirements from the Act to FCA rules. We are not necessarily opposed to this, but make the general observation that information about consumer credit products, and other financial services, is a work in progress. There is debate about whether 'prescriptive' or 'non-prescriptive' works best, but the underlying problem is that firms have a tendency to try to evade whatever information format is prescribed, if it suits their interest to do so. For example, in the insurance market the requirement to remind consumers of their previous year's premium can be frustrated by presenting a theoretical previous year premium, based on changed terms, rather than the amount actually paid, or by creating the impression that a premium increase is due to a change in taxation, rather than to a

change in provider pricing.[3] These presentational choices may or may not be strictly against the rules, but can have the effect of misleading any but the most financially capable and mathematically energetic customers.

There is a ‘cat and mouse’ game over information provision which, because of the complexity and non-transparency of many financial products, is likely to continue into the future. The only remedy is continual experimentation and refinement, focusing on the outcomes of clarity and honesty.

In moving information requirements to FCA rules, the FCA needs to make sure it is not opening itself up to a continuous process of industry lobbying for dilution of information requirements beneficial to consumers. This could tilt the playing field in favour of credit providers, as, due to its resource limitations, the charity/consumer sector would find it hard to keep up.

One area of information provision we think could be improved is in the explanation of APRs. A more accessible version of how APRs are calculated should be included in pre-agreement information, to assist consumers understand the measure and make the best decision for themselves.

(end)

[3] These are actual examples related to us.