

Reforming the Consumer Credit Act 1974

Consultation Response

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Ministerial Foreword

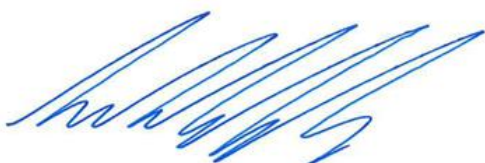
Back in 1974, the Consumer Credit Act (CCA) was a landmark piece of legislation which replaced a confusing and disparate framework of credit regulation with a new and comprehensive set of protections for consumers. It represented radical reform for its time and has served the UK well for many decades.

However, the world has been transformed since 1974. In particular, the internet has revolutionised how we communicate, shop and how many people manage their finances. While it was well designed for its time, the CCA is increasingly under strain to deliver a 21st century customer experience. The existing legislation is ill adapted to technology that was not conceived of almost 50 years ago. It poses challenges for financing emerging technologies like electric cars and enabling online customer journeys via smartphones.

Successive amendments have attempted to update the CCA since its original enactment but, perhaps unsurprisingly, it is struggling to keep pace with the modern world. The time is now right to be as ambitious as our predecessors in 1974 and fundamentally reform the approach to the regulation of consumer credit in the UK.

I am committed to creating a new framework for consumer credit regulation that will deliver for the next 50 years. One that will be native to the dynamism of our innovative consumer credit market, delivers strong and clear protections, allows consumers to make informed choices and allocates responsibility fairly between consumers and businesses.

This consultation response represents the next step in the process to achieve this ambition. I would like to thank all those that have contributed thus far and look forward to continued constructive engagement to deliver our shared goal.

A handwritten signature in blue ink, appearing to read 'Andrew Griffith', is positioned above the name of the signatory.

Andrew Griffith MP, Economic Secretary to the Treasury

Chapter 1

Introduction

- 1.1 For almost 50 years, the Consumer Credit Act 1974 (CCA) has been a key part of the regulation of the UK's £200bn consumer credit market. When enacted, it was a landmark piece of legislation. However, over the decades, the way that consumers interact with credit products has evolved significantly, and many innovative credit products exist today that did not when the regime was designed.
- 1.2 As such, the CCA is becoming increasingly outdated. In addition, its prescriptive nature means it is not always sufficiently flexible to effectively facilitate new developments in the market, including the way that consumers interact with credit, for example, through digital journeys.
- 1.3 On 16 June 2022, the government announced its intention to reform the CCA to ensure it is fit for purpose and keeps pace with technological advancements and changing consumer needs.
- 1.4 In 2014, consumer credit lending was moved into the standard financial services regime in the Financial Services and Markets Act 2000 (FSMA), overseen by the Financial Conduct Authority (FCA). The objective of this was to bring conduct of business regulation under a single financial services regulator, ending confusion for consumers, duplication for many firms, and ensuring a single strategic regulatory view across retail financial services. As part of this transfer, 82 sections of the CCA were repealed, though 167 sections were retained. Consequently, the overall regime is currently located partly in FCA rules under FSMA, and partly in the CCA and associated secondary legislation.
- 1.5 In order to modernise regulation in this area, the government is reviewing the CCA, with a view to moving and recasting much of its provisions (including much of the secondary legislation) in FCA rules. This will create a more flexible regime, bringing it in line with modern financial services regulation, and build on the 2014 transfer of provisions to the FCA. The government is seeking to maintain high levels of consumer protection whilst reducing costs to firms and allowing them to better serve their customers through more innovative credit products.

- 1.6 Reform to the CCA will look to build on the findings of the FCA's Retained Provisions Report in 2019¹ and the Woolard Review² in 2021. In addition, the reform will take into account more recent developments, including the UK's departure from the EU, the strategic direction set by the Smarter Regulatory Framework (SRF) and the FCA's new Consumer Duty. These developments provide additional opportunities to reform consumer credit regulation to ensure a new regime works best for UK consumers and businesses.
- 1.7 On 9 December 2022, HM Treasury launched a public consultation on the strategic approach to this reform. The consultation closed on 17 March 2023. HM Treasury received 84 consultation responses and the government would like to thank all respondents for taking the time to respond to the consultation and for sharing their views. The government welcomed the breadth of stakeholders responding to this consultation, with a good spread of industry participants from a range of subsectors, consumer groups, charities, law firms and other interested parties taking the time to respond (a full list of respondents is set out in Annex A). The government is grateful for the careful approach many took to thinking through these issues and for the detailed nature of responses, which the government will use to inform CCA reform policy development.
- 1.8 Chapters 2, 3 and 4 of this document summarise the key themes emerging from responses. It is clear that consultees are supportive of change and the government therefore intends to proceed with an ambitious approach to CCA reform. However, stakeholders differ as to how reform should be achieved, and the views supplied in response to this consultation are explored further in these chapters.
- 1.9 Following the structure of the consultation, chapter 2 focuses on stakeholder views to the overall objectives and principles of CCA reform, chapter 3 explores feedback on the approach to reform of categories of CCA provisions (such as information requirements, sanctions, and rights and protections), and chapter 4 explores responses relating to financial inclusion and equality impacts.
- 1.10 Chapter 5 sets out the government's next steps and how it will seek to engage with stakeholders to navigate the diverse range of perspectives and develop detailed reform proposals. The government is keen to work with the broadest possible range of stakeholders to consider these issues.

¹ [Review of retained provisions of the Consumer Credit Act: Final report \(fca.org.uk\)](https://www.fca.org.uk/publications/reports/review-retained-provisions-consumer-credit-act)

² [The Woolard Review - A review of change and innovation in the unsecured credit market \(fca.org.uk\)](https://www.fca.org.uk/publications/reports/woolard-review)

Chapter 2

Reform Objectives and Principles

- 2.1 This chapter focuses on the overall objectives and principles that underpin reform of the CCA and seeks to draw out some of the key themes that emerged from consultation responses on these issues. Chapter 3 goes on to summarise the specific feedback from stakeholders on the different categories of CCA provisions set out in the consultation document (scope, definitions, information requirements, rights and protections and sanctions).

Reform Objectives

- 2.2 There was broad support from the majority of consultees for the government's intention to fundamentally rethink the CCA. Consultees were clear that the CCA has served the UK well for many decades and continues to provide important protections. However, it was agreed by many stakeholders that the CCA has failed to keep up with the rapid development of new products and the changing ways in which people engage with credit.
- 2.3 The consultation set out the government's intention to align consumer credit regulation with modern financial services regulation by removing many of the provisions in the CCA and recasting them in FCA rules. Consultees were generally supportive of this objective. However, views differed as to how the government should seek to achieve this. The divergence of stakeholder views on were based on underpinning tensions related to:
- 2.4 **FCA enforcement vs a 'self-policing' regime:** in many cases where lenders breach provisions, the CCA provides that agreements are unenforceable and/or lenders are not entitled to interest incurred. These sanctions apply automatically, without any FCA action. Some, particularly consumer groups, thought that the vast number of credit agreements and the potential vulnerabilities of many consumers means it is important that there are legislative sanctions that can apply without specific action being taken by the FCA or a consumer making a complaint to the Financial Ombudsman Service (FOS). Others, particularly industry stakeholders, considered that the FCA has

the necessary powers to supervise and take enforcement action against those breaching rules.

2.5 Prescription vs outcomes: views differed on whether regulation should be flexible and outcomes-based or prescriptive. Those arguing for prescriptive rules believed that this would provide clarity for firms and ensure a baseline level of service delivery from firms to their customers. Those in favour of an outcomes-based regime argued that firms could tailor their approach depending on the needs of their consumers, and that this approach would make the regime more flexible to respond to market developments.

2.6 Legislation vs rules: while stakeholders generally agreed that parts of the regime could be moved to FCA rules, views differed on how far this should go. Some stakeholders valued the flexibility and agility of FCA rules, which would allow for swifter adaptation to market developments. Others argued that more provisions should remain in legislation in order to provide more clarity for firms and consumers. This was especially the case for some consumer groups who were keen for sanctions and rights to remain in legislation. Some of those who advocated for more provisions remaining in legislation were concerned about how the FCA may use their rulemaking powers. Some thought the FCA may take an overburdensome approach, while others thought its rules may be lighter touch than the CCA.

2.7 As set out in the consultation document, the government plans to develop proposals that move the majority of the CCA into the FSMA model. This will involve repealing many of the provisions in the CCA and recasting them in the FCA rulebook. However, the government recognises that there may be specific aspects of consumer credit regulation that may warrant legislative based provisions.

Net Zero

2.8 The consultation explained that the government is keen to explore how consumer credit can support its net zero objectives, noting that consumer behaviour in this area has changed and new products have developed since the CCA was introduced. Respondents welcomed this consideration (question 2).

2.9 Several stakeholders argued that certain CCA provisions make lending to support sustainable consumer choices more challenging and advocated for changes on this basis. Some argued that section 75 increased the risk to lenders when providing finance for new technology that may not perform in line with expectations. Many also pointed to section 18 (multiple agreements), arguing that this adds complexity when lenders want to provide finance for multiple products (for example, if a

consumer wants to finance an electric vehicle and the battery separately).

- 2.10 However, others cautioned against changes to incentivise the take up of green products, arguing that the role of consumer credit regulation is to protect consumers, and that adding additional objectives could compromise this. They argued regulation should provide protection from the risks arising and that lenders should support consumers where things go wrong. Some also pointed out that altering key rights and protections for sustainable products could inadvertently reduce consumers' confidence to make such purchases.
- 2.11 The government will continue to consider how its regulatory approach can support the provision of finance for renewable energy solutions and contribute to its net zero goals, while ensuring appropriate consumer protection.

Principles

- 2.12 The consultation set out five principles that the government believes should underpin CCA reform and asked for views on these (question 1). The consultation explained that these principles would be used throughout the reform process to ensure the government delivers on its objectives. These principles are outlined below.

Proportionate – the reform will ensure that levels of consumer protection will be appropriate, whilst balancing the need to ensure that the reform places proportionate burdens on business. Some customers in this market may be vulnerable and due care will be given to ensure that high levels of consumer protection are maintained where appropriate.

Aligned – the reform will be aligned with the implementation of the Smarter Regulatory Framework (SRF), will complement and support the Consumer Duty requirements, and will ensure consumer credit regulation broadly aligns with the style and substance of current financial services regulation whilst recognising that due to the nature of consumer credit a tailored approach may be required in specific areas. The reform will also align with wider duties and obligations, such as the Public Sector Equality Duty.

Forward-looking – the reform will be mindful that changes made to the consumer credit and consumer hire regulatory landscape should be adaptable to future ways of delivering credit and consumer hire to consumers and to the needs of consumers and businesses.

Deliverable – the reform will be designed to be deliverable for the financial services regulators and industry. The government is conscious that significant change may be required to internal processes and will ensure that adequate time is given for changes to take effect.

Simplified – the creation of a regulatory regime that simplifies and modernises ambiguous technical terms used in the CCA to make it clear to consumers what protections they have and to make it easier for firms to communicate these protections and comply with requirements placed on them.

- 2.13 Consultees were generally supportive of these principles. Many pointed to the importance of future-proofing the regime so that regulation can respond to emerging products and adapt to innovation. Others also noted that simplification is vital for consumer understanding but cautioned against simplifying the regime at the expense of consumer protection.
- 2.14 Some stakeholders, particularly consumer groups and charities, considered that an additional overarching consumer protection principle should be added. The government would like to reassure these consultees that consumer protection is central to this reform and is therefore threaded throughout these principles. In reforming the CCA, the government is seeking to maintain high levels of consumer protection, which includes considering where changes can be made to existing protections to improve consumer outcomes.
- 2.15 Given the broadly positive stakeholder feedback, the government intends to continue to use these principles to guide its approach to reform.

Deliverability of Reform

- 2.16 Many stakeholders also focused on the ‘deliverable’ principle. They agreed with the view set out in the consultation that CCA reform will inevitably be complex and take a considerable duration of time to complete. Many also sought further detail as to how the government will implement reform, and several put forward suggestions for how reform could be delivered.
- 2.17 Some proposed a phased approach, with information requirements and associated sanctions being reformed first and rights and protections following later. A small number of respondents suggested prioritising targeted changes (such as information requirements) through secondary legislation, if these could be delivered without significantly delaying the overall programme of reform.

2.18 However, some respondents cautioned against a phased approach to reform, arguing that the transition costs to businesses could be higher. As outlined in chapter 3, the government is particularly keen to gather further views from stakeholders on whether a phased approach is desirable and deliverable.

Chapter 3

Reform Approach by Category of CCA Provisions

3.1 The consultation document categorised the CCA provisions into five main areas and sought stakeholder views as to how the government's approach to reform could apply to these categories:

- scope of the CCA
- definitions within the CCA
- information requirements
- rights and protections
- sanctions

3.2 Given the early stage of policy development, the government has not come to any firm conclusions on how these areas will be reformed. The government will consider responses further as part of policy work to create detailed proposals and will undertake further stakeholder engagement.

Scope

3.3 The CCA applies to a wide range of credit related products and activities but also provides for exemptions or a lighter touch approach in certain areas. The consultation sought stakeholder views on a number of areas relating to scope – namely business lending, small agreements and consumer hire – and asked whether the CCA approach to these issues should be revisited (questions 5, 21 and 22).

Business Lending

3.4 As outlined in the consultation, consumer credit regulation does not apply to:

- lending to limited companies
- lending to limited liability partnerships
- lending or hire of a value over £25,000 for business purposes
- lending to a partnership consisting of more than 3 persons.

- 3.5 Many stakeholders argued that the existing scope set out in the CCA relating to regulation of small and medium enterprise (SME) business lending should be altered (question 5). Industry stakeholders generally supported reducing the scope or creating a separate set of requirements and protections for small business lending in the FCA Handbook. They argued that the imposition of CCA requirements reduced the availability or increased the cost of loans within scope. They also said that some of the associated protections are not necessary or cause confusion in a business lending context, particularly where a business also has loans for greater than £25,000 that are not subject to the same protections. Some suggested that certain CCA protections (such as sections 56 and 75 and some sanctions) might not be suitable for business lending if it limits lending and could potentially restrict product innovation or market participation.
- 3.6 Others, including many consumer groups, argued that it is appropriate to extend regulation to all finance directed at sole traders and small partnerships, or that the £25,000 limit should be increased to reflect the effect of inflation since this limit was introduced in 2006. It was noted that there has been a significant increase in the number of self-employed people in recent years and many of them benefit from strong consumer protections. It was also noted that, for sole traders, there is often a blurring between borrowing for business and personal purposes.
- 3.7 A small number of respondents suggested extending the CCA to cover more business types, beyond just sole traders and small partnerships.

Consumer Hire

- 3.8 The consultation noted that under the CCA and in the FCA rulebook, consumer hire and consumer credit (such as hire purchase) are treated differently: many rights, protections and other requirements do not apply to consumer hire agreements. The reason for this is that consumer hire has historically been seen as a lower risk product. Given the increased prevalence of consumer hire, particularly in the motor industry, the consultation asked for views on whether the regulation of consumer hire ought to change (question 23).
- 3.9 A limited number of respondents engaged with this question and the government is keen to work with those who have a particular interest in this area.
- 3.10 Stakeholders held different views about whether the risk to consumers from hire services is equivalent to that from credit products, and this underpinned divergent views on how hire should be regulated.

- 3.11 Many advocated a 'same protection for same risks' philosophy. They said that more analysis should be undertaken on the respective risks of credit and hire services to help determine the extent to which protections should be made more comparable. It was argued that the increased use of consumer hire and the high value of many consumer hire agreements means that there should be equivalent regulation to that which applies to hire purchase. In arguing for higher protection standards for consumer hire, others pointed out that potentially vulnerable consumers are more likely to borrow under consumer hire agreements for domestic items, which do not carry the same protection as rent-to-own.
- 3.12 However, several industry groups argued that the current distinction operates effectively and should not be changed. This was on the grounds that hire customers do not face the same risk of credit impairment and indebtedness, and that the lender bears the depreciation risk of the asset.
- 3.13 Some consultees argued that, in light of the increasing prevalence of subscription services which operate similarly to regulated consumer hire, the scope of what is included as consumer hire should be reviewed.

Small Agreements

- 3.14 Some parts of the CCA, such as those relating to requirements on pre-contractual provision of information and the form and content of agreements, do not apply to small debtor-creditor-supplier agreements for restricted use credit (small agreements). The consultation asked for views on whether the regulation of small agreements should be reconsidered (question 24).
- 3.15 As with consumer hire, there was a limited number of responses to this question. Most responses supported a proportionate approach to the regulation of small-amount credit. Some consultees argued that removing the exclusion could reduce the attractiveness of offering these loans and thereby decrease the market for small-amount credit or make this borrowing more expensive. Some of those that supported increasing the regulatory requirements for these loans argued that they should not be subject to the full regulatory suite of larger loans because they are lower risk, or that a distinction should be made between one-off and repeat small loan lending. Some consumer groups pointed out that vulnerable consumers use small-amount credit and that such credit can play a significant part in managing their finances and therefore the exemption should be removed to ensure higher standards of protection.

Definitions

- 3.16 The consultation noted that some definitions of certain concepts in the CCA have not been updated since 1974 and sought views on whether definitions could be updated (question 3) and whether any concepts which are not currently defined should be defined (question 4).
- 3.17 Respondents argued that changes to definitions would help to achieve a more future-proofed regime that can better facilitate innovation and adapt to emerging products. Definitions that were raised particularly frequently included:
- **Fixed Sum vs Running Account:** a number of consultees argued that the current division between running account and fixed sum credit forces lenders to fit any new products into one of these definitions. It was argued that the definitions prevent product innovation, and noted that many new products, such as Buy-Now, Pay-Later involving frequent online purchases, do not fit neatly into either category.
 - **Multiple agreements:** several stakeholders raised concerns about section 18 (which relates to agreements that contain multiple transactions involving different CCA categories of agreement), arguing that this provision is outdated and prevents firms from designing products that provide finance for multiple items. One of the original purposes of section 18 was to prevent avoidance of the CCA by having multiple agreements on different matters where the combined sum was above a limit for the application of the CCA. As the principal £25 000 limit was removed in 2006 (to reflect the fact that many consumers were taking out credit for larger sums), many stakeholders argued section 18 was no longer needed.
 - **Modifying agreements:** some consultees argued that section 82 – which sets out requirements when the debtor and creditor mutually agree to amend an agreement – is burdensome and might restrict the scope of arrangements lenders could offer to consumers in financial difficulties.
- 3.18 It was also noted that some definitions, such as those relating to credit tokens, have simply become inaccurate as a result of technological developments.

Information Requirements

- 3.19 The CCA has detailed requirements regarding the information that should be provided by firms to consumers both before a credit agreement is entered into, and at key points during the agreement lifecycle. The consultation asked for views on these requirements. The consultation noted the widespread view,

including that found in the FCA's Retained Provisions Report, that information requirements can be overly prescriptive and that there may be merit in moving them to FCA rules (question 6). However, it also highlighted risks to an outcomes-based approach and asked whether and when prescription might be necessary (question 7).

- 3.20 The majority of respondents were supportive of moving information requirements into FCA rules, though for some consumer groups this was only on the basis that the sanctions regime continued to operate in a similar manner (covered in paragraphs 3.41-3.493.41). Respondents supported the opportunity for a more agile regime that can be updated in response to market developments. Respondents also highlighted particular requirements that they think should be updated in the process of transferring the requirements, including Pre-Contractual Credit Information (PCCI), Notices of Sums in Arrears (NOSIAs) and Default Notices, arguing that the excessive prescription can lead to poor customer outcomes. In particular, a number of respondents highlighted the negative mental health impacts of the current regime for NOSIAs and Default Notices.
- 3.21 Industry groups broadly supported an information requirements regime that specifies what kind of information has to be provided and when, but were mostly opposed to requirements that dictate the form of the information, particularly in the context of changing communication channels. Consumer groups supported a higher level of content prescription, to maintain a baseline standard of information provision across the market. Consultees that supported prescription of form most commonly did so for the sake of consumers comparing products at the pre-contract stage.
- 3.22 The consultation raised the extent to which the 'Consumer Understanding' outcome contained within the Consumer Duty could replace the need for prescriptive information requirements (question 8). There was broad agreement across respondents that the Consumer Duty will lead to a transformation in consumer outcomes, but some did not believe it could fully replace the need for more detailed rules on information requirements or would like a chance to evaluate the effect of the Consumer Duty first. Many respondents noted that a reduction in the level of prescription would be in alignment with moving more towards an outcomes-focused regime alongside the Consumer Duty.
- 3.23 Many consultees posited that the prescription of form for information requirements means that firms are required to provide information in a way that is not compatible with smartphones, and that this leads to lower customer engagement

with important information. Some industry and consumer representative consultees argued that a reformed regime could take advantage of the capacity of modern communication channels to engage people – for example, through use of links, graphics, videos, device notifications and other methods that were not available in a paper-based system.

Rights and Protections

- 3.24** The CCA provides consumers with important rights and protections which protect consumers at both the pre-contractual and post-contractual stages of an agreement. The consultation explained that the FCA's current FSMA rule-making powers would not enable the FCA to replicate all of these rights and protections in its rulebook.
- 3.25** The consultation therefore asked for views on whether other existing mechanisms, including the Consumer Duty, could replicate or be comparable in effect to the rights and protections of the CCA (questions 10, 11 and 12), or whether it would be desirable to change the FCA's powers so that rights and protections could be moved to the FCA rulebook (questions 13 and 14). The consultation then focused on three specific rights and protections, which were identified as areas of particular interest to stakeholders. These were time orders, voluntary termination rights and section 140A (unfair relationships) (questions, 15, 16 and 17).
- 3.26** Consultees supported the need for strong consumer protections. However, some believed that certain protections are duplicative or could be amended, noting that many of the protections are almost 50 years old.
- 3.27** On whether other existing mechanisms replicate rights and protections in the CCA, several respondents pointed to the Consumer Protection from Unfair Trading Regulations and the Consumer Rights Act as pieces of legislation that provide some overlap in protections with the CCA. However, most recognised that, given its specific focus on consumer credit, the CCA contains rights and protections that are not mirrored in other legislation. It was also pointed out that CCA rights and protections provide court-based rights for which the effect of moving them from the CCA would require more detailed legal analysis.
- 3.28** Those in favour of removing rights and protections to some degree pointed to other important incentives to treat consumers fairly that have been developed since the CCA was developed, such as the availability of consumer redress through the Financial Ombudsman Service (FOS), and the Senior Managers and Certification Regime (SMCR). They believed that such factors

provide comparable protections to some of those in the CCA. In arguing for the retention of rights and protections either in the CCA or similar form, consumer groups pointed out how these other forms of redress help consumers but are incomplete substitutes for CCA rights, particularly as a way to enforce legal rights through the courts or defend against court-based actions.

- 3.29 A number of industry respondents argued that the Consumer Duty could replace the need for some rights and protections, as firms who do not provide appropriate customer support could be subject to FCA enforcement action. Consumer groups felt that the Consumer Duty should complement the legislative provisions in the CCA, rather than being relied upon as a replacement, and that removing rights and protections should not be considered until the Consumer Duty has been in force for a period long enough to evaluate its effect. As noted previously (paragraph 3.22), the government is keen to monitor the implementation of the Consumer Duty and understand whether and how it could provide appropriate rights and protections in this area.
- 3.30 While there was support from many for amending FSMA to allow the movement of rights and protections, stakeholders thought at least some provisions should remain in legislation. A number of stakeholders argued it would be impossible for the FCA to fully replicate CCA rights and protections and that they would therefore have to remain in legislation. In particular, stakeholders argued that section 75 could not be replicated (see paragraphs 3.31-3.32). There was also concern from some industry stakeholders that moving certain provisions to FCA rules could result in the loss of case law that has added clarity and aided firms' interpretation of the CCA, and that the government should be mindful of this when developing proposals.

Section 75

- 3.31 Section 75 was widely commented on by respondents. This provision makes providers of certain types of regulated credit (for example, a regulated credit card or point of sale loan) jointly and severally liable with a supplier for a misrepresentation or breach of contract in relation to goods or services financed by the credit agreement. The consumer may, therefore, choose to pursue a claim against either the supplier, the creditor, or both, provided that certain requirements are met.
- 3.32 Section 75 was generally seen as an important provision by industry and consumers, with some noting that it provides consumers with greater confidence to make purchases on credit. However, many consultees believed it could be modernised. Some noted that there is a lack of clarity on whether it applies to

transactions where the debtor-creditor-supplier chain has broken, and that consumers may use credit to make payments believing it applies where it does not. Others believed the creditor should only be liable for the amount of credit they have provided, rather than the overall liability of the supplier (which could include the cash price for the goods or services and any consequential loss), and/or that the consumer should only be able to pursue the lender where they have first been unable to do so against the supplier.

Time Orders

- 3.33 Time Orders, covered in sections 129-130 of the CCA, allow the consumer time to pay back the loan and consequently to make other changes to the agreement, such as changing the rate of interest.
- 3.34 It was accepted by the majority of respondents to this question that Time Orders are rarely used. Some stakeholders pointed to the FCA's forbearance rules and the potential impact of the Consumer Duty as more appropriate mechanisms to protect borrowers in financial difficulty. However, consumer groups argued that Time Orders incentivise lenders to act responsibly towards borrowers in financial difficulty and that they are useful in responding to enforcement action.

Voluntary Termination

- 3.35 As explained in the consultation, the right to voluntary termination (sections 99 and 100) is an important protection for consumers taking out hire-purchase and conditional sale agreements. This right allows customers that have a hire-purchase or conditional sale agreement to terminate the agreement before the final payment is due, though they remain liable for 50% of the total price as well as any arrears due at the time they exercise such rights. The consultation asked for views on the utility of this provision.
- 3.36 Many industry stakeholders stated that the original intention of the provision was to help consumers in financial difficulty or to address the economic imbalance that might arise between the value and depreciation of goods and the sums the customer had to pay. However, voluntary termination rights are now frequently used in the motor finance context where customers are not in financial difficulty. Some industry stakeholders argued that the widespread use of voluntary termination has led to higher prices for consumers and that the provision should be revisited.
- 3.37 Consumer groups argued that the right to voluntary termination remains important for customers in financial difficulty and for

addressing the imbalances in the lender-customer relationship under hire purchase and conditional sale agreements.

Unfair Relationships

- 3.38 The unfair relationships provision (section 140A-140C) provides the court with broad discretion to find that the relationship between the creditor and the consumer that arises out of a credit agreement is unfair to the consumer. The government is aware that this provision is particularly divisive and asked for stakeholder views.
- 3.39 Industry stakeholders believe the drafting of the provision is unclear, difficult to interpret, and gives the court wide discretion that is difficult to predict. They believe that the provision should at least be redrafted to improve its operability. Many went further, arguing that the strong protection provided by the FOS means section 140A is no longer needed at all and that the existence of the provision is an unpredictable variable compared to other consumer credit law, with the consequent potential to lead to unexpected liabilities. In turn, they argued that this can drive higher costs that are passed onto consumers.
- 3.40 However, consumer groups strongly valued section 140A, arguing that it provides a strong redress mechanism and that it allows the courts to go further than the FOS. They argued that it gives consumers an immediate right of action when urgently needed, rather than relying on what can often be a lengthy process to seek redress through the FOS.

Sanctions

- 3.41 The consultation noted that sanctions are an important part of the consumer credit regime, providing a strong incentive to firms to comply. Many sanctions in the CCA are 'self-policing' in nature and apply automatically without the FCA or the consumer needing to take specific action. This was particularly important when the CCA was first enacted, given the limited regulatory reach of the Office of Fair Trading to oversee the market and intervene where necessary.
- 3.42 The consultation set out the government's initial view that many aspects of the sanctions regime could be streamlined given the FCA's role in supervising credit firms and its powers that exist under FSMA. However, it was also noted that consumer credit is unique among financial services products due to the large number of firms and varying risks across different groups of consumers which may create challenges for a sanctions regime based purely on the FCA's existing enforcement powers.

- 3.43 The consultation sought views on three types of sanctions in particular:
- **Unenforceability without a court order:** this type of unenforceability provision gives rise to the automatic sanction of unenforceability, unless a firm successfully obtains a court enforcement order.
 - **Unenforceability during breach:** this type of unenforceability provision gives rise to the automatic sanction of unenforceability during the period of the breach, whereby a firm is prevented from enforcing an agreement until it has remedied the breach.
 - **Disentitlement:** this sanction results in no liability for consumers to pay interest or default charges that accrue during the period of non-compliance.
- 3.44 The consultation asked for views on whether it would be desirable for the FCA to be given the powers to replicate these sanctions in their rulebook (question 18) and whether the proportionality of sanctions ought to be considered (question 19 and 20).
- 3.45 Many industry stakeholders saw unenforceability as one of the central problems with the CCA. They argued unenforceability is disproportionate and applies even where there are only trivial breaches that do not lead to any meaningful consumer harm. Industry argued that the sanctions are onerous and significantly add to the cost of offering credit, which is in turn passed onto the consumer. They said that the potentially high costs of non-compliance contribute to a 'tick-box' compliance approach rather than a tailored approach to focusing on their customers' needs. Some respondents provided data on the costs associated with having to provide redress due to minor and technical breaches.
- 3.46 Many industry stakeholders therefore argued that unenforceability should be removed and not replicated in FCA rules, believing that the FCA's enforcement powers and other routes to redress – such as through the FOS – provide adequate sanction and deterrence against malpractice.
- 3.47 Those industry stakeholders who were open to replicating unenforceability in FCA rules thought that it should only apply to a few core requirements where there is a serious risk of actual consumer harm. They argued that where it does apply, it should be for requirements where there is a clear standard of compliance – as opposed to outcomes-based requirements – so that there is no confusion where they apply and must be remedied.

- 3.48 Some consumer groups and charities suggested that there could be a more proportionate application of sanctions but were clear that there would have to be careful consideration of the breaches to which sanctions would continue to be attached in order to ensure consumer protection is not reduced. Despite this, most argued strongly for the retention of automatic sanctions, either in FCA rules or legislation. They generally argued that the sheer volume of credit agreements means that the FCA would not be able to effectively oversee the whole market and take enforcement action in all instances of rule breaches.
- 3.49 Further, they argued that there was a need for strong deterrents and safeguards given the high risk of consumer harm and the vulnerabilities of many consumers in this market. Many argued that automatic sanctions provide protection to consumers that other forms of redress could not, pointing to the usefulness of unenforceability in preventing enforcement action being taken in the first place, and that vulnerable customers may not be in a position to initiate redress or make counterclaims for damages.
- 3.50 Some stakeholders noted that, if unenforceability sanctions were to be applied to FCA rules, then courts should remain responsible for providing enforcement orders. It was argued that the FCA is not resourced to carry out this role and that the courts are more suitable.

Criminal Offences

- 3.51 The consultation outlined the CCA provisions that give rise to criminal offences. Key provisions include prohibitions on canvassing off trade premises (sections 49 and 154) and circulars to minors (section 50). The consultation noted that the government is not aware of any prosecutions under these provisions and that the FCA now has extensive disciplinary powers, including to impose fines. In this context, the consultation asked for views on whether the criminal offences are still valuable (question 21) and whether any offences are outdated (question 22).
- 3.52 Some consultees noted the strong enforcement powers of the FCA and the fact that the criminal offences have never been used, arguing that they are not necessary. Others were supportive on the basis that they may provide a strong deterrent. In particular, some stakeholders were supportive of the retention of section 50 (circulars to minors) to provide a strong deterrent against firms targeting under 18s.

Chapter 4

Financial Inclusion and Equality Impact Assessment

- 4.1 The government seeks to ensure that people, regardless of their background or income, have access to useful and affordable financial products and services. This includes accessing credit in a fair and affordable manner. The government is keen to use this reform to make the consumer credit regulatory regime more inclusive and Chapter 5 of the consultation asked stakeholders for their views on how CCA reform can best achieve this.
- 4.2 The government was grateful to consultees for the helpful responses to these questions, which will assist it to develop a regime that fully considers equality issues, including financial inclusion, and in having full regard to its obligations under the Public Sector Equality Duty. The government will reach out to stakeholders in due course to explore many of these issues further.

Financial Literacy and Numeracy

- 4.3 The consultation asked stakeholders how CCA reform can ensure that consumers with differing levels of numeracy can understand consumer credit products and make informed decisions (question 25). There was widespread agreement that the presentation of numerical information relating to consumer credit products can be improved.
- 4.4 Some argued that a less prescriptive approach to information requirements could allow numeric information to be presented in alternative ways, such as pictorially, by providing specific cash amounts rather than percentages, and by reducing the use of technical and legalistic terms. Some stakeholders noted that the Consumer Duty will assist in ensuring firms consider the individual circumstances of their customers.

Financial Inclusion and Mental Health

- 4.5 As outlined in the consultation, the government is keen to consider how CCA reform can improve the treatment of

vulnerable customers and reduce the risks that consumer credit might pose to customers' mental health.

- 4.6 Many consultees identified the prescriptiveness of information requirements in the CCA as a key concern. Some claimed that Notices of Sums in Arrears and Default Notices can be overwhelming and intimidating for customers, and that these notices can reduce the likelihood of recipients seeking help or engaging with their lender. Lenders also complained that they are unable to alter these documents even where there may be concerns about the mental health of their customers.
- 4.7 A number of consultees suggested that existing and soon-to-be-implemented initiatives, such as the Breathing Space scheme and the Consumer Duty, will lead to better outcomes in this area.

Islamic Finance

- 4.8 The consultation explained that the government is keen to explore how a new regime can facilitate effective regulation of Sharia-compliant financial products. The government is aware of the challenges faced by providers of Sharia-compliant finance in operating within the current regulatory framework. The consultation asked for more detail on the key considerations government should take into account in this area, in particular which aspects of the CCA are incompatible with providing Islamic finance, and how regulation can provide for simpler comparison between Islamic and non-Islamic finance products (questions 27 and 28).
- 4.9 Respondents noted that Sharia-compliant products tend to be built on a hire or leasing model, which do not benefit from the full suite of CCA protections. Stakeholders pointed out that the prescriptive nature of the CCA and the existence of certain definitions based on APRs prevents firms from creating Sharia-compliant products. The CCA therefore inhibits the fuller range of credit products that firms might want to offer to their customers.
- 4.10 The government is keen to explore this area further so that it can ensure that, to the furthest extent possible, Sharia-compliant agreements can be accommodated within the new regime.

Public Sector Equality Duty

- 4.11 When formulating a policy proposal, the government is required to comply with the Public Sector Equality Duty in the Equality Act 2010, ensuring that it has due regard to eliminating unlawful discrimination, advancing equality of opportunity and fostering good relations between those who share a protected characteristic and those who do not. The consultation asked for

views on particular equality implications and mitigants the government should consider when developing reform proposals.

- 4.12 Several stakeholders highlighted issues already raised in the consultation, such as mental health and the importance of considering Islamic finance. One stakeholder pointed out that many CCA requirements have historically been based on an assumption that consumers are able-bodied. For example, they highlighted that the existing regime requires customers to be able to see the prominence of certain information and to provide a signature in a box. They noted that less prescription and a focus on outcomes could address this. One consultee commented on data showing that a disproportionate number of recipients of debt advice are women, and also encouraged the government to consider how ethnicity interacts with financial inclusion. Another respondent highlighted concerns regarding how algorithmic approaches to credit provision may be leading to discrimination.
- 4.13 Several consultees noted that it would be easier to consider the equality implications of reform once more detailed proposals are brought forward.
- 4.14 The government is reflecting on the issues raised. It will engage with stakeholders to further build evidence on the equality impacts of any changes and will act on these accordingly. Under its statutory obligations, the government will also be required to conduct a full Impact Assessment of any proposals. This will require the government to fully consider the impact on consumers, including across different protected characteristics and issues around access to credit products.

Chapter 5

Conclusion and Next Steps

Conclusions

- 5.1 Given the widespread support demonstrated by consultation responses, the government plans to move forward with an ambitious overhaul of the CCA. The government continues to believe that reform will facilitate innovation in the credit sector, increase accessibility of credit products, and contribute to growth in the sector and the economy more broadly. The government also sees this as an opportunity to bolster existing consumer protections to ensure customers remain adequately protected in a modern and increasingly digital economy.
- 5.2 The government plans to develop proposals that move the majority of the CCA into the FSMA model. This will involve repealing much of the CCA and recasting it in the FCA rulebook. However, the government recognises that there may be specific aspects of consumer credit regulation that may warrant legislative-based provisions. After considering stakeholder feedback to this consultation, the government will seek to make these decisions guided by the principles set out on pages 11 and 12.

Next steps

- 5.3 This consultation was the first stage in the reform process. As consultees identified, due to its scale and complexity, CCA reform will take a number of years to deliver. It will likely require primary legislation, a detailed rulemaking process by the FCA (supported by a Cost Benefit Analysis), and appropriate transitional periods to allow industry to prepare and adapt to new rules.
- 5.4 As a next step, the government will be undertaking policy development to produce more detailed proposals, with a view to publishing a second stage consultation in 2024 to seek comment from stakeholders.
- 5.5 In advance of that, the government will engage further with stakeholders to inform its proposals, both through bilateral meetings and broader roundtables. The government will reach out to a range of interested parties on the overall design of the

new regime. In particular, it is keen to take time to engage widely on cross cutting issues – such as the degree to which regulation should be outcomes based, an approach to sanctions, and the extent to which provisions should be removed from legislation – to develop a clear articulation of the desired end state for consumer credit regulation.

- 5.6 The government is keen to ensure that its approach to reform is informed by data and a strong empirical evidence base. Under its statutory obligations, it will be conducting an Impact Assessment of any proposals. The government is therefore keen to understand from stakeholders what data they may be able to share to inform such analysis.

Implementation

- 5.7 As noted above, consultees were supportive of an ambitious approach to reform, but the government recognises that many would appreciate more specific information on longer-term implementation timelines, and that some are concerned about the length of time until a new regime is implemented.
- 5.8 Given the early stage of reform, it is currently difficult to provide a specific timeline. In particular, the government believes that it is important to develop a detailed policy approach before coming to a view on how it should be implemented and what timings might be feasible. However, the government is keen to be open and transparent with stakeholders on this point and will seek to provide more detail in due course.
- 5.9 The government is also open to exploring whether a phased approach to implementation may be appropriate. For example, the government could look to make changes to certain parts of the regime (such as information requirements and associated sanctions) first, with reform of the remaining aspects of the regime following at a later date. This would ensure that some of the benefits of reform are realised sooner than might otherwise be the case. However, the government recognises that the interconnected nature of the CCA could make it difficult to divide reform into discrete phases and may not be viable in practice. There may also be concern that such an approach would result in higher transitional costs to industry. While initially focused on what a reformed regime will look like, the government is keen to hear representations from stakeholders on the desirability and deliverability of a phased approach to implementation.

Annex A

List of Respondents

Individual respondents are not named

Advertising Association

Advice NI

Amplified Global

Asset Finance Solutions Compliance Ltd.

Association of British Credit Unions Limited

Association of British Insurers

Bar Council

Barclays

Block

British Chambers of Commerce

British Retail Consortium

British Vehicle Rental and Leasing Association

Capital on Tap

Capital One

Centre for Responsible Credit

Chartered Institute of Credit Management

Chartered Trading Standards Institute

Christians Against Poverty

Citizens Advice Scotland

City of London Law Society Regulatory Law Committee

Civil Court Users Association

Confederation of British Industry

Consumer Council

Consumer Credit Trade Association
Credit Services Association
Debt Camel
England Illegal Money Lending Team
Experian
Fair4AllFinance
Fairer Finance
FCA Practitioner Panel
Finance and Leasing Association
Financial Ombudsman Service
Financial Services Consumer Panel
Fluro
Fox Williams
Gately Legal
Green Finance
Hertfordshire Trading Standards
HSBC
Ihsan Islamic Finance Solutions Ltd
Innovate Finance
Institute of Consumer Affairs
Institute of Money Advisers
Klarna
Law Society of Scotland
Lending Standards Board
Lloyds Banking Group
Lowell Group
Money Advice Trust
Money and Mental Health
Money and Pensions Service

Money Saving Expert
Monzo
National Pawnbrokers Association
NatWest Group
NewDay
Osborne Clarke
Plain Numbers
Radiocentre
Registry Trust
Revolut
RSA
Shakespeare Martineau
Shelter
Smaller Business Practitioner Panel
StepChange
Surviving Economic Abuse
The Coalition for a Digital Economy
The Financial Inclusion Centre
The Money Charity
TheCityUK
TransUnion
TrustMark
UK Finance
Which?
Zilch

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