



Law Society
of Scotland

Paper A 28 Feb EQL

Consultation Response

HM Treasury Reform of the Consumer Credit Act
consultation

March 2023



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied, and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders, and our membership.

Our Consumer Law, Equalities Law and Health and Medical Law sub-committees welcome the opportunity to respond to the HM Treasury Reform of the Consumer Credit Act consultation¹.

We have the following comments to put forward for consideration:

Consultation questions

Question 1: Do you agree with these proposed principles, and do you have views about tensions between them or relative prioritisations?

Yes, we agree with the proposed principles.

Question 2: Noting the governments' Net-Zero targets, how can CCA reform remove barriers that may otherwise prevent lenders from being able to offer financing for renewable energy solutions, such as electric vehicles and green home improvements?

¹ [Reform of the Consumer Credit Act: consultation - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/reform-of-the-consumer-credit-act)

We are concerned about the legal and practical restrictions caused by the current definition of multiple agreements, and we support the removal of barriers, for example, where products are bundled together, such as, electric vehicles to be kept together, while maintaining adequate protection for consumers.

Question 3: Are there any existing definitions or concepts in the CCA which should be updated and clarified when moved to FCA rules?

We believe that multiple and modifying agreements should be updated and clarified when moved into FCA rules.

Question 4: Are there concepts in the CCA which are not currently defined but which should be?

We have no comment to make.

Question 5: Do you believe the business lending scope of the CCA should be changed?

No, we do not consider that the business lending scope of the CCA should be changed, as we are comfortable with sole traders and small partnerships being in the scope of CCA, and we consider that sole traders and small partnerships should have the same protection as consumers.

Question 6: Do you support the conclusion of the Retained Provisions Report that most Information Requirements could be replaced by FCA rules without adversely affecting the appropriate degree of consumer protection, and that it is desirable to do so? Are there any additional factors the government should consider given the context changes since the report's publication in 2019?

Yes, we support the conclusion of the Retained Provisions Report that most Information Requirements could be replaced by FCA rules without adversely affecting the appropriate degree of consumer protection.

We have no comment to make on whether there are any additional factors the government should consider.

Question 7: In what circumstances is it important that the form, content and timing of pre-contractual and post-contractual information provided to consumers is mandated and prescribed? What are the risks to providing lenders more flexibility in this area?

We consider that the content and understandability is more important than prescribed wording.

The impact of the Consumer Duty will introduce changes into the customer pre contract journey, and information should be clear and understandable from the consumers perspective and must be consistent with the Consumer Duty.

Regarding risks, we suspect that authorised firms will try and comply with the rules and the risks of non-compliance should, hopefully, be minimal. Where non-compliance is identified, the FCA has adequate enforcement powers to address this.

Question 8: The Consumer Understanding outcome in the Consumer Duty posits that consumers should be given the information they need, at the right time, and presented in a way they can understand it. Does the implementation of this section, and the Consumer Duty more broadly, go some way to substitute the need for prescription in CCA information requirements?

Yes, we consider it does.

Question 9: Given the increasing using of smartphones and other mobile devices to take out credit products how can consumer information be delivered on devices in a way that sufficiently engages consumers whilst ensuring they receive all necessary information?

Yes, we feel the provision of consumer information should be adaptable to suit any channel the information is delivered on.

Further, information should be provided to consumers which is accessible and meets their needs, for example the ability to provide information in an accessible format or on devices that assist with making information more easily accessible will improve the experiences of disabled people.

Question 10: Are there any areas where, in your view, consumer protection legislation, rules and/or guidance, outside of the CCA, makes for appropriate levels of consumer protections and mirrors or replicates the effects of the provisions in the CCA?

We believe that it would be more appropriate for HM Treasury to focus on incorporating the existing rights under the CCA and its Regulations into the FSMA Regime.

Question 11: If other consumer protection legislation, rules and/or guidance, outside of the CCA, falls short of replicating the effect of the provisions in the CCA, where do these gaps exist and how significant are they?

Please see our response to question 10.

Question 12: The FCA's Consumer Duty mandates a consumer support outcome. How does the Consumer Duty interact with the rights and protections provided to consumers in the specific consumer credit regulatory regime, which currently consists of the CCA and FCA rules?

We consider that the consumer duty and FCA rules sit comfortably with each other and there is consistency.

Question 13: If it is possible to amend the FCA's FSMA rule-making power to enable FCA rules to replicate the effect of rights and protections currently in the CCA, what is your view on the risks and benefits of doing this?

We believe that a single regime is more straightforward and would be ideal, particularly given the complexity of this area.

Question 14: Are there any rights and protections provisions which you feel should not be moved to FCA rules and should remain in legislation? Please provide an explanation of why you hold these views.

We believe that the rights and protections afforded to consumers in section 75 CCA should be moved into FCA rules, where this is possible or can be made possible. We would comment that the provisions of section 75 CCA offer meaningful consumer protection and should be preserved.

Question 15: Given this, to what extent do time orders provide additional protections to these rules and guidance? What evidence are you aware of that the existence of this right changes firm behaviour and improves consumer outcomes?

The FCA is correct in that time orders are not used very often. We believe that the need for time orders has reduced, given the requirement to exercise forbearance, but they serve a purpose and should be retained.

Question 16: What is your view on the usefulness of the right to voluntary termination and its role in protecting consumers? Are there improvements that could be made to the functioning of this right?

We believe that voluntary termination is useful for consumers, however the finance industry may argue against its use, as it gives it consumers right to protect themselves when managing their finances and enables consumers to help avoid financial difficulty and when dealing with their debt and financial planning.

Question 17: To what extent do the FSMA and FOS regimes make the unfair relationship provisions unnecessary? If these provisions are to be kept in legislation, with other rights and protections moving to FCA rules, does this create more complexity and confusion for lenders and borrowers and what will the effect on innovation in the sector be?

We acknowledge that the FSMA and FOS regimes offer meaningful protection and remedies to consumers, however we require more background information before we can comment on this. This maybe an issue that merits further investigation.

Question 18: Would you be supportive of HM Treasury exploring the option of amending FSMA rule-making powers in such a way to enable unenforceability to apply to breaches of FCA rules in a similar manner to how unenforceability applies under the CCA, noting there would not be a role for court action in this scenario?

We believe there is an argument to a consistent approach, and we would support this provided the protections are maintained and the consequences of unenforceability are proportionate.

Question 19: Do you agree that the government should consider the proportionality of sanctions and ensure that they are relative to the consumer harm caused/potentially caused?

Yes, we agree that that the sanctions should be relative to the actual consumer harm caused, rather than the harm that is potentially caused.

Question 20: What types of breaches of CCA rules do you think that sanctions should attach themselves to and why? For example, should the disqualification sanction be limited to the small sub-set of cases giving rise to unenforceability, where there is the greatest risk of harm?

We believe that the issue of sanctions should be addressed when the rules have been established.

Question 21: How valuable are the CCA provisions that give rise to a criminal offence? (See Annex 2 for list of CCA provisions that give rise to criminal offences)

We believe that given the sanctions that are available to the FCA, we don't think there is merit in keeping the criminal sanctions.

Question 22: Are there any provisions that are outdated because the practices they pertain to are not used anymore, or would removing some CCA provisions lead to the return of these practices?

We have no comment to make.

Question 23: What is your view on the merits in increasing the standards of conduct for consumer hire agreements to make them comparable to those for consumer credit?

Given the increased use of consumers' leasing of vehicles, and regulated leases, we support the harmonisation of the standards of conduct in consumer hire agreements and other forms of consumer credit.

Question 24: Should the section 17 provisions which enable exemptions from specific elements of the CCA and CONC continue to exist? What would be the impact of these provisions not applying?

We have no comment to make other than we note section 17 CCA for small agreements below £50, was disapplied in BNPL. We believe that consistency across all products and regulation is important, and we cannot comment on the impact.

Question 25: How can this reform ensure that firms provide information to consumers which is accessible for a wide range of financial literacy and numeracy levels?

It is important that the lending industry provides appropriate information to consumers which is accessible and in simple clear language which consumers understand. We recognise that a number of people lack financial literacy and numerical skills, and it is important that communications to consumers are clear and understandable.

We also consider that reference to “a wide range of financial literacy and numeracy levels”, should also include reference to literacy, in the general sense, and not limited to financial, computer literacy and IT skills, and the full range of mental, intellectual, and sensory disabilities, as set in the United Nations, Convention on The Rights of Persons With Disabilities (CRPD).

Question 26: In what ways should this reform ensure that consumers' mental health and wellbeing is supported throughout the consumer credit product lifecycle?

We do not believe that additional legislation is required as the current approach through the Consumer Duty supports consumers health and wellbeing.

Question 27: What are the key considerations that the government need to take into account when reforming the CCA 70 to ensure that Sharia compliant loans can be expressly accommodated? Which areas of the CCA are not currently compatible with Islamic Finance, and how could they be amended to accommodate Sharia compliant loans?

It is important that finance is available to the Islamic community, and that they have the protections that are currently available to all consumers.

Question 28: If interest rates are prohibited for Islamic Finance products, how does the government ensure that Islamic finance and non-Islamic finance products can be easily compared, given that APR values are used for comparative purposes?

We endorse the principal that they should be.

Question 29: Are you aware of any implications of our policy approach on people with protected characteristics?

As noted above, the ability to provide information in an accessible format will have a positive impact. We note that the provision of guidance by the FCA "Guidance for firms on the fair treatment of vulnerable customers"² as a positive measure.

² <https://www.fca.org.uk/publications/finalised-guidance/guidance-firms-fair-treatment-vulnerable-customers>

Question 30: Do you have any views on how the government can mitigate any disproportionate impacts on protected characteristics?

We have no comments to make.

For further information, please contact:

Gavin Davies
Policy Team
Law Society of Scotland
DD: 0131 370 1985
GavinDavies@lawscot.org.uk