



Financial Conduct Authority

Detailed proposals for the FCA regime for consumer credit

Response from Citizens Advice Scotland

Fraser Sutherland, Policy Officer

November 2013

- Citizens Advice Scotland and its member bureaux form Scotland's largest independent advice network. CAB advice services are delivered using service points throughout Scotland, from the islands to city centres.
- Citizens advice bureaux in Scotland helped clients with over 500,000 new issues in 2011/12 – more than 1,400 new issues for every day of the year. Nearly 200,000 clients brought new issues to a bureau over the year.
- In 2011/12, Scottish bureaux achieved a financial gain of almost £140million for clients based on funding of £16.9million.

Introduction

Citizens Advice Scotland (CAS) welcomes the opportunity to respond to the detailed consumer credit proposals that have been set out by the Financial Conduct Authority (FCA).

While the proposals cover a number of different consumer credit firms we especially welcome the rules regarding high-cost short-term lending. Citizens Advice Bureaux (CAB) in Scotland has seen their caseload with regard to high-cost short term credit (commonly recognised by the public as ‘payday loans’) increase by a third over the last year. This means that there are 100 contacts every week regarding these loans at Scottish CAB.

In response to this CAS undertook a public survey of payday loans users which formed the basis of a recent evidence paper and recommendations on the subject. This Payday Loans: a mayday call paper draws on some of our case evidence on the subject as well as the survey data. More information on the paper can be found online at our website www.cas.org.uk/payday-mayday.

Response

1. Authorisation and the potential alternatives

Q1: Do you have any comments on the way our threshold conditions are being applied to consumer credit firms and/or the updates to our Handbook rules?

We fully support the general approach that the FCA has made in authorisation for consumer credit. This will align as much as possible, to existing rules for the banking and insurance sectors. Additionally we appreciate the work the FCA has done to make a risk-analysis of the firms within the consumer credit umbrella with a view to carrying out more robust checks on those considered high-risk. We agree with the risk regimes that are identified within the consultation and support consumer credit lending, debt collection and credit brokerage being classed as high-risk.

Q2: Do you agree with the updates to our draft Handbook rules for approved persons for consumer credit firms?

Q3: Do you have any comments on the updates to our draft rules regarding appointed representatives of consumer credit firms?

Q4: Do you have any comments on the criteria that we are proposing a person would have to fulfil to be a self-employed agent of a principal firm (as set out in Appendix 2)?

CAS are not in a position to comment on the specific rules regarding approved persons or representatives for licensing purposes.

2. How we will supervise firms and collect data

Q5: Do you have any comments on our proposed regulatory reporting regime?

We support the move towards a reporting regime for consumer credit firms that is similar to that which applies for other financial firms already regulated. CAS note and support an interim period to allow for transition by firms, in terms of reporting, until 1 October 2014. CAS would however suggest that the FCA should also require firms who are not yet authorised but are in the process of authorisation to provide information if requested. This would ensure that the FCA were aware of any issues concerning that firm's conduct and allow for a full investigation to be carried out in advance of authorisation.

Again we support the risk based approach with larger firms required to submit reports more frequently than smaller firms. Not only does this avoid undue burdens on small firms it also ensures protection for the largest number of consumers.

Q6: Do you agree with our proposals to collect product sales data on high-cost short-term lending and home collected credit?

We support the plans to collect data relating to the high-cost credit loans sector as this will provide a detailed data source for the FCA to carry out investigations into the sector. CAS would suggest that given the close interworking between brokers and high-cost credit that the FCA collect product sales data from these firms alongside this work.

3. Conduct standards for all consumer credit firms

Q7: Do you have any comments on how we propose to carry across CCA and OFT standards, in particular in the areas highlighted above?

CAS do not have specific comments with regard to how the FCA adopt current rules as set by the CCA and OFT. We do however support the move to make guidance on irresponsible lending part of the enforceable rules set out to high-cost credit firms. CAS have been concerned that many in the payday lending sector have not complied fully with their responsibilities set out in the irresponsible lending guidance. Any move to turn this from being seen as 'optional' guidance to 'enforceable' rules is to be welcomed.

Q8: Do you have any comments on our proposed approach to financial promotions?

We strongly support proposals in the consultation regarding cold calling by debt management and high-cost lending firms. CAB clients often report the frequency and nature of phone contact by such firms as at least annoying and worst disturbing to vulnerable clients.

A recent study by Ofcom found that 8 in 10 homes in the UK regularly receive nuisance calls. While not all of these are from financial firms there is a sizable

number that are, and any auditing that the FCA can do to reduce the prolific nature of phone calls is to be welcomed.

CAS supports an outright ban on cold-calling for sales or promotional purposes. Although the FCA have opted not to take this approach at this time we believe that many vulnerable people can be frightened by the nature of ‘dropped’ or ‘silent’ calls that are often linked to cold-calling practices. CAS would call on the FCA to consult on this matter further with consumer groups and Ofcom within the next year to gauge the scale of this problem. The FCA may take the view at that point that a complete ban is necessary on sales cold-calling from financial firms.

Closely related to this CAS has seen anecdotal evidence of debt management firms contacting high-cost credit customers by phone. CAS are concerned at how data is being shared between firms and we would support the FCA making relevant enquiries in this regard.

4. Proposed rules for high-cost short-term credit

Q9: Do you agree with the definition of a high-cost short-term credit provider as set out at the start of this chapter?

We agree with the definition of high-cost short-term credit provider. We appreciate the effort made by the FCA to future-proof this terminology to allow for new developments. CAS is acutely aware of this market being in a state of constant change and innovation and the FCA must be able to keep up with providers in the market. CAS have in the past and will continue to use the term ‘payday loan’ as a catch all term due to its widespread understanding by consumers.

Q10: Do you have any comments on limiting rollover to two attempts?

Q11: Do you have any comments on whether one rollover is a more appropriate cap?

CAS agree that the number of times a loan can be rolled over should be capped. As the FCA have recognised, rollovers are the main way in which debt in a high-rate environment can become unmanageable over a short period of time.

Our own research as published in our November 2013 paper ‘Payday Loans: A Mayday Call’ detailed that major failings were identified by borrowers with the rollover of a payday loan. This survey asked 190 users of a payday loan their experiences around a number of areas that were based on the payday lending Good Practice Customer Charter on 2012. Our survey found that 36% of borrowers were not told of the risks of extending a loan. This increased to 86% of those who had actually had their loan rolled over. Our study also found that the majority of clients did not feel that their personal finances and general situation had not been properly checked to ensure they could afford the extended loan.

A West of Scotland CAB reports of a single pensioner who is dependent on welfare income alone. He is caught in a cycle of payday lending as he rolls over or takes out a new loan to pay off the previous one for three months running. What started as a loan of £100 for a repair has now reached over £350 with no way for the client to afford paying it off.

The OFT compliance review found that by a second rollover a borrower could be facing twice the amount he or she borrowed. This clearly shows that a rollover of loan is seldom in the interest of the borrower. CAS recognise that in some occasions this facility may be needed however we would recommend to the FCA that rollovers are limited to one per loan rather than the two proposed. CAS are concerned that rolling over twice is a clear indication of financial stress or hardship and we do not believe that allowing an extension at this stage will make the debt management easier for the borrower.

Q12: Do you have any comments on our proposal to introduce a limit of two unsuccessful attempts on the use of CPAs to pay off a loan?

&

Q13: Do you have any comments on our proposal to ban the use of CPAs to take part payments?

CAS agrees with both these proposals as defined within the consultation document. We believe that the prolific use of CPA usage within the industry indicates that companies are relying on this method of debt recovery at the expense of sound and proper affordability checking. We have extensive evidence from CAB across Scotland that the use of CPAs are causing severe financial hardship. CAB in Scotland have been presented with clients where the advice given was to seek an emergency food parcel from a food bank due to a CPA taking the last money in that person's account.

An East of Scotland CAB reports of a client who had previously taken a payday loan to pay for food shopping. The loan repayment Continuous Payment Authority has now taken the remaining amount of money in her account this month and she is now facing the prospect of either borrowing again to pay for food or seeking help from the local food bank.

CAS are not entirely clear as to how the FCA will enforce this rule as it will not be clear to a borrower how many times their account has been accessed by a CPA. We would encourage the FCA to work with those in the banking sector to have them provide timely reports to the FCA of where the CPA rules are being broken. Additionally we would support the use of automatic fines each and every time the FCA uncovers a breach of the CPA rules to work as a clear deterrent. CAS believes that this should include a method of compensation to the borrower who had been affected.

CAS would like to highlight however that we believe that the high-street banks need to provide training for their front line staff with regard to CPAs. CAB have reported a number of clients who, because of tight financial stress, have attempted to cancel a CPA. Despite the borrower being well within their rights to do this on occasions it has been reported that a member of bank staff has refused to so. CAS have raised this issue with banking management and they are aware of the CPA cancellation rights however there appears to be a widespread misunderstanding by frontline staff. We would appreciate if the FCA could further raise this as an issue with the banking sector.

Q14: Do you have any comments on our risk warning?

We support the view that high-cost lending is seen by borrowers as attractive because of the quick and easy nature of taking out a loan. The advertising to this effect by the lenders helps support this view and we support the use of a risk warning to serve as a reminder to consumers. CAS doesn't have sufficient evidence to determine whether or not this would change behaviour however we believe that providing the consumer with such information will allow them to make a better informed choice about the type of credit they use.

We would welcome further detail as to how the warning will be displayed. We do not agree with the current wording of it having to be displayed 'prominently' as we feel this is not sufficiently clear. We would therefore welcome further guidance from the FCA on how they would expect the warning to be displayed. In our view the health warning should at least be in the same size as the text selling "the product".

Q15: Do you have any comments on our proposals to require high-cost short-term lenders to provide information on free debt advice before the point of rollover?

CAS are strongly in support of this rule. Our 'Payday Loans: a mayday call' survey study found that 64% of payday lenders did not tell the borrower about free and independent debt counselling organisations. Free debt advice may provide the answer that a client who has multiple debts has been looking for. Often people with multiple or unmanageable debt will think that taking out new debt to pay off old is their only option, whereas a debt advice organisation will be able to discuss all the options available to them and let them make an informed decision.

Q16: Do you have any comments on the effectiveness of price capping?

CAS support the FCA looking at price capping in detail, however we regard that this must be considered as a whole approach to high-cost loans. We believe that capping APR alone will not be effective in reducing the actual cost to borrowers. For example a cap would need to take into account the whole cost, pound paid back for pound borrowed. Many credit providers charge a number of fees or charges on their products with legitimate reasons or doing so. We believe that not including charges or fees in this consideration could lead to more hidden charges being used to keep prices at the same level as current. Additionally CAS is concerned that any move to using fees rather than interest rates would lead to less transparency in borrowing

and would encourage making a simple method of comparison based on the total cost per one pound borrowed.

Aligned with a cap on pricing we would support the FCA carrying out an investigation concerning the effectiveness of capping the amount borrowed linked specifically to the borrower's income. CAS does not have the evidence to prove the effectiveness of this policy but we are aware of it being used internationally, such as in British Columbia and we would support consideration of this and other international approaches by the FCA.

This month CAS called for the UK Government to consider setting up an independent investigation bringing together some of the best economic minds in the country to look at the detail of any price cap. We would fully support the FCA co-ordinating and publishing the findings of such an investigation which could be used as a blue print for future rules in the lending market.

5. Prudential standards for debt management firms and some not-for-profit advice bodies

Q17: Do you agree with our proposals on how to calculate our prudential requirement for debt management firms and some not-for-profit debt advice bodies? If not, what amendments would you suggest, and why?

CAS have no comment, as our CAB members do not hold client money

Q18: Do you agree with our proposal to apply a transitional approach to prudential standards for debt management firms and some not-for-profit debt advice bodies?

CAS have no comment, as our CAB members do not fall into any of these categories.

6. Conduct standards for some specific consumer credit activities

Q19: Do you have any comments on our draft guidance on the debt counselling activity and our draft rules covering the provision of debt advice?

No. If the draft guidance is based on the existing OFT Debt Management guidance, there should be little problem complying, as licensees should already be following these guidelines.

Q20: Do you have any comments on the rules that we propose to apply to peer-to-peer lending platforms to protect borrowers?

CAS are supportive of the FCA taking an early engagement in this new sector. While it is not something that we have had clients request support on to date we do support the rules that have been set out by the FCA as fair and protective of the consumer.

We support an on-going engagement by the FCA of firms in this new sector to ensure that their lending system is fair and transparent and has the necessary safeguards in place.

7. Proposals for debt management firms that hold their clients' money

Q21: Do you agree with our proposals for debt management firms and not-for-profit debt advice bodies that hold client money? If not, which aspects of the regime do you disagree with and why?

Yes. Reputable businesses should already be keeping client monies separate from the business' money, keeping accurate records, paying creditors timeously and have regular reconciliations and annual audits.

Q22: Do you agree with our proposed implementation timetable? If not, please give reasons.

No. We have concerns about the standards of some businesses holding client money who have ignored the OFT Debt Management Guidance to date. Leaving them under the OFT guidance may send the wrong message to these firms regarding their need to improve their standards. However we agree that new entrants should be subject to the new rules from authorisation.

8. New proposals for second charge loans

Q23: Do you agree with our suggested amendments to the reporting requirements for second charge loans?

As we detailed in our answer to Q5 we support the FCA requiring firms to give information where there is concern regarding their practices. We have no further comments than the points we made in our answer to Q5.

9. Complaints to the ombudsman service and redress for consumers

Q24: Do you agree with our proposal to allow all microenterprises to complain to the ombudsman service?

CAS has no comment regarding this.

Q25: Do you agree with our proposal to include not-for-profit bodies providing debt advice in the Compulsory Jurisdiction?

CAS agree that not-for-profit bodies providing debt advice should ideally come under the Compulsory Jurisdiction to enhance consumer confidence and protection. However we would also want to ensure that bureaux are not tied up in bureaucracy

and costs in implementing this regime, especially in regard to vexatious complaints. An ombudsman general levy and case fees would be onerous to not for profit bodies. We believe that putting a levy cost on the charitable sector will prove detrimental to the service that they offer clients. The money paid in such a levy would mean cuts in other others of the work thus potentially reducing the amount of free advice available to clients.

Q26: Do you agree with our proposals on recording, reporting and publishing complaints?

CAS agree with the complaint recording and reporting requirements as set out in the document. We are aware that this requirement currently applies to other financial organisations that are regulated and know from experience that this reporting can flag up issues to the FCA when the complaint logs are analysed.

As with other areas we support the risk-assessed approach whereby those who are considered high-risk are required to report more often than low risk firms.