

# Reforming the Consumer Credit Act **Fair4All** **Finance response**

**March 2023**

## **Summary**

We welcome the opportunity to review the Consumer Credit Act, and agree with the principles behind the reform, which should lead to simpler and more agile regulatory framework for the credit market.

We believe there is a clear opportunity and consensus among stakeholders to use the reform to improve consumer understanding and engagement with credit. This includes updating prescriptions around communications to be clearer and more impactful, as well reviewing the effectiveness of APR requirements as a tool to show the cost of credit compared to the use of simple pounds and pence.

As the shape of the reform develops, we would be interested to see more detailed proposals on how it could support product innovation and improved access to credit for excluded customers, both of which we see as important policy priorities in consumer credit.

We agree with the FCA's Retained Provisions Report that there are many important consumer protections in the CCA that cannot be replicated under the regulatory framework set out by the Financial Services and Markets Act 2000. It is important that consumer protections do not slip between the cracks in the course of this reform.

## **About Fair4All Finance**

Fair4All Finance is a not for profit organisation founded in early 2019 to improve the financial wellbeing of people in vulnerable circumstances by increasing access to fair, affordable and appropriate financial products and services. We have three main priority areas:

- Expanding provision of affordable credit through a scaled community finance sector
- Partnering with banks and financial services providers to support the delivery of products and services for customers in vulnerable circumstances

- New product and market development – developing and scaling products and services to address market gaps

You can find our full strategy [here](#).

## Our response

### Principles and approach

We are supportive of proposals to reform the Consumer Credit Act. As a general principle we agree that setting out regulation into the FSMA framework rather than legislation should allow regulation to be developed in a more agile way and better react to changes in the market.

Additionally there are certain clear opportunities to update areas of the CCA which make it harder for firms to support their customers – notably around communications, accessibility and consumer engagement.

As the government develops the strategic direction of this reform, and based on input from industry in this first stage, we would like to see more proposals on other ways this reform can support innovation in products and improving access to fair credit for consumers.

We are supportive of the proposed principles behind this regulation and agree that this reform should “aim to increase equality and fairness in the credit market, by improving accessibility and access to credit products for a range of consumers to make the consumer journey as inclusive as possible”. We would like to see this focus on consumers – including access, inclusivity, and protection – made an explicit principle of the reforms.

So we support the direction set out in the FCA’s Retained Provision Report, which based its review on analysis of whether the repeal, replacement or reform of each provision of the Consumer Credit Act would impact consumer protection.

The CCA is a well established and tested piece of legislation that is familiar to firms. The regulator has finite resources and is already driving forward a significant agenda, including implementing the Consumer Duty and reforming the credit information market.

We therefore agree with the principle that reforms should be proportionate, deliverable for the regulator, and not unnecessarily burdensome for firms. It’s important that protections do not fall between the cracks and that reforms are not implemented without good reason for the additional burden this will place on firms and the regulator.

Given the complexity of the CCA and its interactions with other regulations, we are pleased that the government is taking a taking a multi stage approach to reform, and recognising where details may be better worked out by the regulator in collaboration with stakeholders and consumer organisations. We would welcome opportunities to engage further from the perspectives of consumer outcomes, market innovation, and access to fair credit as the reforms move to the next stage.

## Rights, protections and sanctions

We believe there are areas where consumer rights and protections in the CCA provide a valuable complement to regulation.

For practical reasons, the FCA is unable to supervise all firms closely at all times. Often the FCA is only able to take enforcement action after consumer harm has occurred.

The approach to redress in FSMA framework can often be a longer process, where a customer has to complain to a firm, and then escalate the complaint to the Financial Ombudsman Service, which is a long process in itself. The redress measures available to the FOS are not as extensive as those that can be provided by the courts under the CCA. And the private right of action under FSMA is not accessible or widely used for most people, particularly those in vulnerable circumstances.

The Consumer Duty represents a welcome step up in standards that firms are expected to adhere to, but it will still be regulated and enforced under this framework. We therefore don't believe it is a replacement for the protections of the CCA.

Regarding rights and protections, we would agree with the approach set out in the Retained Provisions Report and would defer to consumer organisations with greater experience than us of implications of the CCA. However, key areas where we believe the CCA continues to add important and complementary consumer protection to FSMA regulation include

- Section 75, which is an established and well known consumer protection, which as identified by the FCA cannot be replicated in FSMA
- Section 87 which prevents creditors from taking certain enforcement actions until they have notified borrowers about their default. However, there is an opportunity to update the form, content and triggers of these notices, as below.
- Time orders and unfair relationship provision, which provide additional powers to protect borrowers in financial difficulty, through changing term lengths, reducing payments or freezing interest, which aren't replicated in FSMA
- The right to voluntary termination of hire purchase and conditional sale agreements – we agree with the FCA that this provide an important protection to customers in financial difficulty. Combined with restrictions around repossession of goods, these protections provide a useful counterbalance for borrowers in these agreements, since the threat of repossession and the fact that goods are not owned by borrowers until fully paid off gives creditors a stronger hand

We agree that the automatic and self-policing nature of unenforceability and disentitlement sanctions provide important consumer protection that is additional to protections under FSMA, as well as providing an incentive on firms to be compliant. As set out above, the FCA does not have the resources to perfectly

supervise all firms, and the right of private action is not a practical option for most people.

If it is assessed that powers to implement unenforceability sanctions could be transferred to the FCA without losing consumer protection, we could support that as a way to ensure that sanctions are aligned with proposed new information requirements and can be updated together as needed.

## **Information requirements - inclusive and accessible credit**

We believe the primary opportunity around reform of the CCA is about improving consumer engagement and supporting a more inclusive credit market.

We agree with the FCA's Retained Provisions Report that most of the information requirements of the CCA could be moved into FCA regulation.

This is an opportunity to update information requirements, such as precontractual information disclosures and default notices, in order to strip out jargon, cut back on unnecessary content and, in plain English, prioritise the key information consumers need to make good decisions.

Research by StepChange and Amplified Global found that there are clear opportunities to improve communications to people in financial difficulty, and that the current wording and approach to communications can be a barrier to people seeking help.

Lenders we work with also highlight NOSIA requirements as a key area where CCA provisions create difficulty for consumers. Lenders report having to send inflexible default notices to customers who have already reached an agreement or repayment plan with them, and have to send communications telling customers to ignore the default notices.

Reforming information requirements will also support successful implementation of the consumer understanding outcome of the Consumer Duty, which aims to raise standards of communication by firms, and ensure that communications deliver good outcomes for customers. There is a clear clash with some of the information requirements of the CCA, which have not been well designed to deliver good outcomes for borrowers.

We recognise that there may still be a need for some prescription of content and timing of information provided, to ensure that standards do not slip and firms do not obscure or deprioritise important information.

Although the Consumer Duty aims to raise standards among firms, the outcome and principle based nature of the regulation means firms will have more leeway to interpret their communications. As well as requiring extra resource from firms to ensure compliance in this area, this could lead to some firms dropping standards. Additionally, removing prescribed information requirements makes it more complicated for the regulator, consumers and their advisers to spot where a lender has breached their responsibilities. This means there may still need to be 'core' information that is provided in a clear and prescribed way.

In any case, moving information requirements into FCA legislation is an opportunity to review, update and

simplify the wording and processes around information requirements, to ensure they work better for consumers. It also means these can be updated more easily in the future as and when it is needed, without having to change legislation.

We support the government’s suggestion that the FCA may wish to consider research and testing into the consumer credit journey as a whole, to ensure that information requirements encourage customer engagement and contribute to informed decision making.

### APR and consumer understanding

Following the UK’s exit from the EU there is an opportunity to review the legacy of the Consumer Credit Directive. As suggested in recommendation 25 of the Woolard Review, we believe that reviewing the use of Annual Percentage Rate (APR) could be a way to improve accessibility and understanding of credit among consumers.

Our work with responsible lenders has led us to believe that APR is not a useful representation of cost of short-term credit for customers. It can lead to confusion and can distort perception of certain parts of the market.

For larger loans over a long term, such as mortgages, APR can be a useful comparator. But for shorter term loans, for example those under 18 months, it is not a useful representation of the cost of credit.

The table below illustrates some of the difficulties with using APR, which particularly distorts total cost for very short term products, and makes comparison between loans of different lengths difficult.

Type of loan	Amount	Term	Total interest cost	APR	Interest cost per £100
<b>From a friend</b>	£75	1 week	£4.20	1,614%	£5.60
<b>Payday loan</b>	£500	6 months	£500	1,355%	£100
<b>CDFI</b>	£500	6 months	£140	169%	£28
<b>Credit union (short term)</b>	£500	6 months	£54	42.6%	£11
<b>Credit union (longer term)</b>	£3000	2 years	£390	12.7%	£13
<b>Mortgage</b>	£100,000	25 years	£102,563	6.5%	£102

Particularly for shorter term loans, we believe that people would benefit from wider use of a more intuitive and transparent representation of the cost of credit in pounds and pence, such as total interest cost, or interest cost per £100. This would improve consumer awareness of the true financial differences between

credit options.

As above, if the FCA is to undertake research into consumer engagement with information across the credit journey, then reviewing the prioritisation of APR, and considering alternative or supplementary representations of price would be a useful aspect of this work.

This also has a systemic impact on access to credit. In our work to scale up the fair and affordable credit market, we have found that misconceptions about APR are a factor that puts off mainstream finance providers from delivering and funding the small sum, short term credit that so many people need. In a recent roundtable we held with industry, lenders identified fear of reputational damage as a barrier to entering this market.