



CONSUMER CREDIT ACT – THE CASE FOR REFORM

The Association of Alternative Business Finance (AABF), the British Vehicle Rental & Leasing Association (BVRLA), Consumer Credit Trade Association (CCTA) and the Finance & Leasing Association (FLA) represent lenders and leasing companies across the UK.

Modernisation of the Consumer Credit Act (CCA) is pressing to simplify procedures to support customers in financial difficulty and address other impediments to a forward-looking consumer credit market. We have developed proposals with the support of legal experts to identify the areas of the CCA most urgently requiring change.

EXECUTIVE SUMMARY

- The Consumer Credit Act (CCA) is approaching its fiftieth anniversary but some of its core provisions date back to the 1960s. Reform is therefore long overdue.
- We propose a simplification of consumer credit landscape via a twin-track approach of the Financial Services and Markets Act (FSMA) and Financial Conduct Authority (FCA) rules to enhance existing consumer protection as they will be able to be applied in a more responsive and flexible manner, for example, when customers need urgent support.
- It will facilitate the delivery of innovation, for example the funding of low emission vehicles, and new market entrants to offer more consumer choice.
- The Government has made the case for reviewing the financial services regulatory framework (in its consultation on the post-Brexit landscape) and our recommendations build on its proposals.

OVERVIEW

The current regulatory framework governing consumer credit for over 40,000 firms is complex and ill-suited to the way in which today's households borrow to smooth their finances or SMEs lease equipment to grow their businesses.

We favour a simpler approach which starts from the premise that nothing is required to be retained in a specific piece of legislation, namely the Consumer Credit Act (CCA). We need to consider what regulatory and legal protections are needed today (which may mean retaining similar protections to those in the CCA, including S75 rights, and enhancing them in other areas) and then legislate in a way which removes duplication, fosters flexibility and is done in a proportionate manner. The FCA's very comprehensive review of the CCA (presented to HM Treasury in 2019) provides a good starting point.

It would be possible to replicate the CCA's provisions in a combination of powers contained in Financial Services and Markets Act (FSMA) and the Financial Conduct Authority (FCA) Consumer Credit sourcebook (CONC). Primary legislation could amend FSMA to create protections to those in the CCA and the FCA could prescribe in CONC when these protections would apply. In this way, the regulators could respond quickly in a targeted and proportionate way to real harm, based on evidence gathered by the FCA.

Building on the FCA's 2019 [review of the retained CCA provisions](#), *Information Requirements* would, for example, be set out in the rules in CONC, whilst *Rights and Protections*, including S75 connected liability, and *Sanctions*, including enforceability of agreements and disentitlement of interest, would be in FSMA, but with the precise information rules that trigger the protections (for example, which information if missing from agreements) being set out in CONC. This would entail adding or transferring some provisions into FSMA while giving Ministers the power to enact other provisions by secondary legislation under FSMA or delegate them to the FCA. Such an approach would offer more flexibility and enable the regime to be updated in a timely manner.

A modern regime must achieve a number of outcomes for consumers and small businesses. It must be about improving access to credit to maintain a competitive market which provides tailored products to a range of customer cohorts, including those who traditionally find it harder to source affordable credit, and be sufficiently malleable to adapt to a customer's changing circumstances as the pandemic has demonstrated. Equally, people borrow in a different way and to different ends compared to how they did a generation or two ago. Once upon a time, credit was a long-term proposition to buy big-ticket items such as a washing machine. Nowadays, households use credit more flexibly to effectively 'rent' goods, for example, a car allowing them to smooth their expenditure in a responsible way

The borrowing process must be easy for customers to navigate to cater for the increasing prevalence of credit taken out online. It must facilitate the emergence of new technologies, including loans to facilitate the purchase of greener vehicles and business equipment, as well as supporting household investment in more environmentally-friendly home improvements, and be future-proofed for new market entrants and ways of interacting with customers.

When consumers fall into financial hardship, the rules must not add to their distress nor place obstacles in the way for lenders to offer forbearance in a streamlined and efficient manner. When things go wrong, it must provide for proportionate redress.

Key challenges with the current regime are set out below.

EXAMPLES OF INADEQUACIES WITHIN THE CURRENT REGIME

The CCA, whilst a ground-breaking piece of legislation when it was first introduced, no longer serves the needs of the modern consumer. The economic jolt caused by Covid-19 has shed light on its inadequacies. We have set out below our ideas for a simpler regime which has the potential to fix these whilst enhancing protections for consumers and small businesses without needing substantial parliamentary time.

Unsympathetic forbearance measures

The CCA prescribes the actions a lender must take when a customer is struggling to make repayments. This may involve issuing a modifying agreement, which is a cumbersome process that requires new documentation and a customer signature. Considering that FCA members, for example, have received over 1.7 million requests for payment deferrals since the outset of the pandemic, the consequent delays for customers is evident. The process should be streamlined so that borrowers can get the help they need in a prompt and transparent manner.

Heavy-handed approach to non-payers

The CCA also mandates the dispatch of a *Notice of Sum In Arrears* (NOSIA) if a payment is not paid by the due date. It does not take account of any arrangements the customer may have made with the lender, for example agreeing a period of breathing space. As a result (in particular) of the prescribed language, customers are being sent inappropriate, confusing and unhelpful communications from lenders, who actually want to help. This too needs to be modernised.

The Government has recently published secondary legislation – following input from lenders and other stakeholders – to tone down the intimidating nature of the *Default Notice* given under Section 87(1) of the CCA. More improvements could be made if the content of these documents could be incorporated within FCA Handbook via rules and principles. This would enable changes to documentation to be made more quickly to ensure customers were receiving the right sorts of documents at the right time and to suit a firm's customer base.

The CCA also requires lenders to send information to customers whom they know to have moved, so called 'gone aways'. This clearly runs the risk of fraud and may give rise to data protection concerns. These requirements are obsolete and must therefore be removed.

Unclear information requirements

Consumers want clear, concise and easy-to-understand information both at the pre-contractual stage and during the lifetime of the credit agreement. The CCA regime focuses on prescribed compliance with technical requirements. Despite significant information being set out in SIs, this is enhanced further by FCA Handbook Rules. This leads to duplication in several documents that are provided to customers and adds to the length of information being provided.

The cumbersome standard pre-contractual information does not work well in digital delivery channels. It repeats information found in agreements. Brexit gives the UK the opportunity to review the content requirements prescribed by the EU Consumer Credit Directive (CCD), including this standard information.

We would suggest that the information requirements be considered as a whole to work out whether they are fit for purpose and customer-friendly. The FCA could then create a single set of simple Rules in their Handbook, where lenders would find all the information they need to comply, assisting new market entrants. This would remove duplication and make all information consistent in its approach. It could be made channel neutral enabling lenders to innovate in highlighting customer information, for example, presenting online applicants with links to further information.

Inflexibility to cater for the modern consumer's demands

The way consumers and small businesses use credit has evolved significantly over the last decade let alone during over half a century.

A prime example of the CCA's failure to adapt to modern times is the challenge it poses to the wider funding of low emission vehicles (LEVs). Firstly, the Hire Purchase Act 1964 (the precursor to the CCA) defines a motor vehicle as being "mechanically propelled", which calls into question whether HP agreements for LEVs are legally watertight. Secondly, it poses a challenge to funders who can *either* finance the entire vehicle or plant and machinery as they do currently for Internal Combustion Engine (ICE) and hybrid vehicles *or* fund the battery and the rest of the vehicle separately using two separate agreements. Both methods lead to risks or complexities for the customer, finance company or both depending on the product used. It would be beneficial for the CCA to allow for more than one asset to be financed against one agreement in one transaction. This could potentially allow for finance companies to fund a package, incorporating the vehicle, battery and (where required) a charge point as well as any other add-ons. This would be particularly useful for the used ULEV market. More flexibility could also allow for new financial innovations that make EVs more affordable.

Consumers increasingly prefer subscription models for their consumption of household items (which is arguably a greener approach), in essence, hiring goods. Consumer hire offers less protections (e.g. no joint and several liability) though customers are unaware – and should be aligned with those in place for Hire Purchase (HP) and Personal Contract Purchase (PCP). This would be appropriate for the motor finance market but also payments made via online platforms. Consumers would also

benefit from if credit and hire documentation requirements were as aligned as possible.

Similarly, Sharia-compliant finance does not benefit from the same consumer protections as other products. Most Islamic scholars consider repayment loans, including secured forms of credit such as HP, to be usurious, with compliant finance being built instead around hire and lease-equivalent models, which result in less protection in certain respects. This is discriminatory and should be addressed via primary legislation.

Disproportionate sanctions

A modern regime should penalise errors made by finance companies in a manner proportion to the harm they cause the borrower. The CCA includes provisions which give rise to the automatic sanction of unenforceability where agreements are not executed properly or where information is incorrect, as well as a disentitlement sanction where a customer has no liability to pay interest or default sums during the period of non-compliance. This is often disproportionate to the error made. For example, a lender may wish to revise the statutory wording on default interest and fees in a NOSIA to make the position clearer to a customer (in line with Treating Customers Fairly) but is unable to do so without breaching the requirements. Unless a lender can argue that these changes do not affect the substance of the form of wording, the agreement will become unenforceable and the customer will have no liability to pay interest and default fees.

By contrast, the mortgage regime deals with this in a more balanced manner, with lenders being required to simply update the information provided. If the customer has suffered loss because of the breach of the Mortgage Handbook (MCOB), he or she is entitled to bring a claim for damages against the lender.

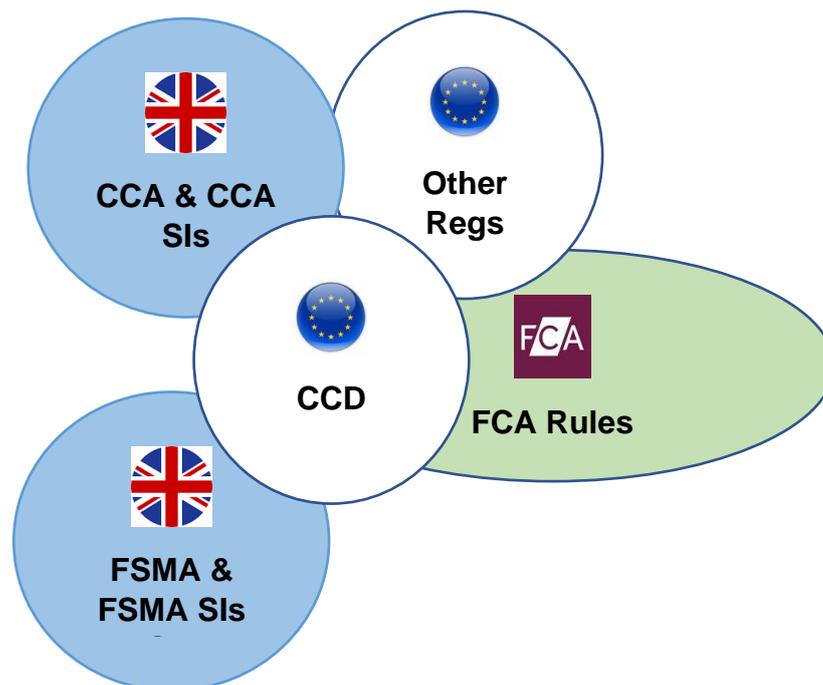
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ANNEX

Current position

The current legal and regulatory regime for consumer credit is complex, out-of-date, inflexible and hard to navigate, consisting of:

- Consumer Credit Act 1974 (CCA)
- 27 statutory instruments made under the CCA
- Consumer Credit Directive 2008/48/EC (CCD)
- Financial Services and Markets Act (FSMA) 2000
- Financial Services and Markets Act 2000 (Regulated Activities) Order 2001
- FCA rules, mainly in the Consumer Credit Sourcebook (CONC), made under FSMA 2000
- Consumer protection legislation (e.g. Consumer Rights Act, Consumer Contracts (Information Cancellation and Additional Charges) Regulations 2013, Consumer Protection from Unfair Trading Regulations 2008)
- Payment Services Regulations 2017



Future opportunities

The UK will cease to be bound by the CCD from January 2021. If UK primary legislation can be secured, this affords an opportunity to enact a more transparent, future-proof and adaptable regime for consumer credit and with more straightforward compliance for the 40,000 firms, many of them SMEs. The core CCA provisions that require legal enactment (such as rights and liabilities), could be incorporated into FSMA as for other financial services products. All other matters would be delegated

to FCA rules – to bring them into line with the regulatory approach for all financial services products.

