Consumer credit and personal insolvency review: summary of responses on consumer credit and formal response on personal insolvency

July 2011

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1. Foreword

As set out in the Coalition Agreement, the Government is committed to reforming the UK's financial services regulation, curbing unsustainable lending and strengthening consumer protections, particularly for the most vulnerable. Our vision is for all consumers to be empowered, able to achieve the best results for themselves while being protected against unscrupulous business practices. Making sure that we do this in the most efficient and effective way is essential.

To this end we announced the Consumer Credit and Personal Insolvency Review and launched a Call for Evidence to gather evidence and views on possible reform.

Since the Call for Evidence was published several new and important consumer protections have come into force. The five new rights for credit card customers[1] mean they will have greater influence over their cards and it will be easier for them to compare and move to a better deal; the Consumer Credit Directive[2] gives consumers an absolute right to withdraw from any credit agreement within 14 days; and the OFT's Irresponsible Lending Guidance[3] provides greater clarity on what constitutes irresponsible lending.

The evidence suggests that while regulation can sometimes be necessary, much can be achieved through other means. A voluntary approach can have clear benefits not just for business but for consumers as well. Businesses are not burdened with the cost of implementing new regulations and consumers do not have to wait for regulations to come into force before increased protections are introduced. This is often the best approach, although in some circumstances firmer regulatory action is necessary.

The Government's priority is to ensure that we achieve real benefits for consumers while avoiding the unintended consequences that can be caused by market intervention. We are carefully considering our options on the issues covered by the review and the responses received. This document summarises the responses we have received and sets out the next steps on the personal insolvency issues in the Review while we continue to consider the way forward on the credit issues.

Store cards, bank charges and credit/store card interest rates

The review asked for evidence on three Coalition Agreement commitments – cooling off period for store cards, unfair bank charges and interest rate caps on credit and store cards.

On a cooling off period for store cards, the evidence suggested that while many consumers use store cards to their advantage, some are distracted from the longer term financial implications of taking out a store card by the discount offered or sales assistants' approaches. The use of incentives encouraging people to make snap decisions to sign up

[1] http://www.bis.gov.uk/assets/biscore/corporate/docs/c/10-768-consumer-credit-card-consultation-response

[2] http://www.bis.gov.uk/policies/consumer-issues/consumer-credit-and-debt/consumer-credit-regulation/ec-consumer- credit-directive

[3] http://www.oft.gov.uk/about-the-oft/legal-powers/legal/cca/irresponsible

to new store cards is a particular cause of concern. However, industry also pointed out that the Consumer Credit Directive introduced important new protections for consumers in 2011 and should be allowed to bed-in before further action was taken.

On unfair bank charges, the evidence showed that there have been significant developments in the market in recent years. As part of the OFT's work, banks have committed to introduce measures to improve the transparency of unarranged overdraft charges and many have also revised their charging structures in the last 2 years; this has already led to some reductions – the average unpaid item charge has fallen by more than half from £35 in 2007 to £14 in 2010. However, responses to the Call for Evidence showed that there are still serious concerns about how charges – including the new charging structures - affect consumers, particularly where charges may be not be clear or transparent enough.

On both store cards and bank charges, the impact of recent changes in the market on consumers is not yet clear. Instead, the Government is still working with industry to determine the most appropriate course of action. We will, however, regulate to address consumer detriment if suitable alternatives cannot be agreed.

On giving regulators the power to introduce an interest rate cap on credit and store cards, the evidence indicated that a cap might not be in the best interests of consumers although there was some concern about levels of interest rates.

High cost credit

It became clear that the real concern about interest rates was centred on the high cost credit market and a number of responses called on us to introduce a cap on the total cost of credit that could be charged in the different sectors of this market. Unfortunately there was a lack of hard evidence submitted on the impact that this proposal would have on the market. The research that does exist suggests that introducing price controls can restrict the availability of credit to low income consumers and increase their use of loan sharks, which is an outcome we clearly want to avoid. It is unclear whether a cap on the total cost of credit would have the same effect.

This means that we need robust additional evidence before coming to a conclusion on the best way to protect vulnerable consumers in the high cost credit market. Therefore we will commission research on the impact of introducing a cap on the total cost of credit.

Personal Insolvency

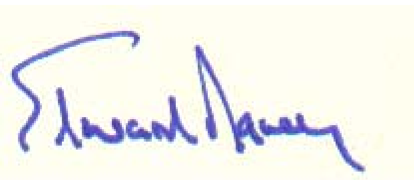
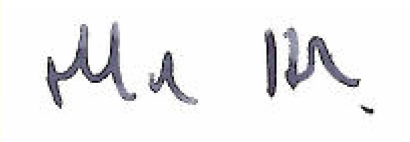
Once they have entered into a credit agreement, we recognise that inevitably some people will fall into financial difficulties. What has become abundantly clear from responses to questions on personal insolvency is the importance of ensuring that consumers have access to free and impartial advice on dealing with their debts. We are told that this is crucial to their finding the most appropriate debt remedy for their circumstances.
As well as our commitment to continue funding the face-to-face debt advice project for this year, we are working to move the provision of debt advice in the future to a more sustainable footing. In order to achieve this, we are pleased to announce that the Money Advice Service has agreed to take on responsibility for the coordination of debt advice services.

We recognise concerns about the provision of debt management services and note that there is potential for the regulatory landscape to significantly change here[4]. In the meantime, we will work alongside OFT and key players in the debt management industry to drive up standards and drive out unscrupulous behaviour. This will include working with creditors to build on existing voluntary codes that allow debtors breathing space whilst they seek to organise their affairs.

We intend to consult later in the year on increasing the level of debt on which a petition can be brought, so that small levels of debt cannot in future bring with them the disproportionate threat of bankruptcy, a major improvement for some of the most vulnerable consumers.

In addition we will consult on streamlining current procedures by repealing those that are little used, and to improve the access that bankrupts have to basic bank accounts.
In conclusion, we are pleased to be taking forward these proposals on insolvency and debt advice that will assist consumers most in distress. We will report back later in the year to announce the Government position on the consumer credit aspects of the review.

Edward Davey and Mark Hoban

[4] http://www.hm-treasury.gov.uk/consult_consumer_credit.htm

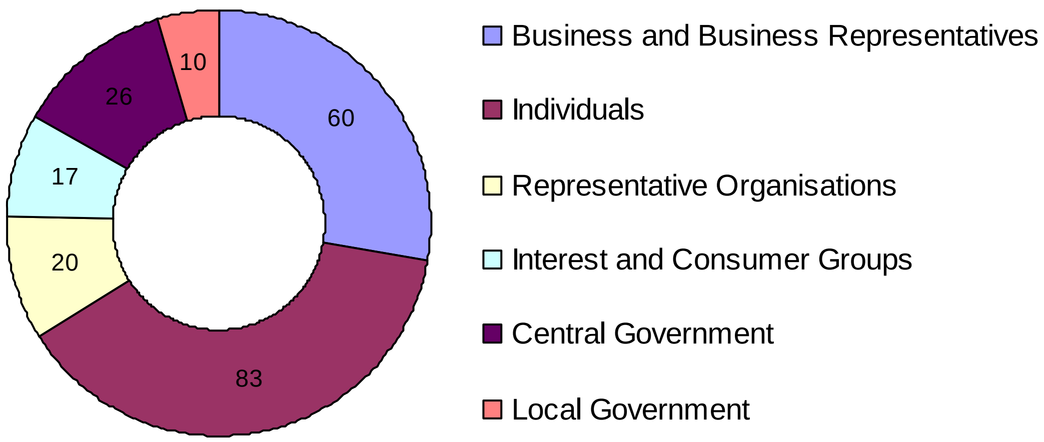
2. Introduction

The Call for Evidence

2.1 The Call for Evidence was conducted between 15 October and 10 December 2010 and asked 31 questions covering a range of issues from advertising regulations to dealing with unfair bank charges to dealing with debt. A list of the questions is attached at Annex A. A copy of the Call for Evidence can be accessed via the BIS website at http://www.bis.gov.uk/Consultations.

2.2 BIS received 216 responses to the Call for Evidence. Although outside the scope of the Call for Evidence, over 1800 responses were received from individuals and campaigning organisations calling for the Government to take action in the high cost credit market to reduce the cost of credit for vulnerable consumers. All responses received by BIS, including those on issues outside the scope of the Call for Evidence, have been analysed by BIS officials and have been taken into account in the Government response.

Fig 1 – Responses to the Consumer Credit and Personal Insolvency Review



Online Questionnaire

2.3 In addition to the Call for Evidence consumers were encouraged to complete a short online questionnaire that asked for their opinions on current consumer credit rules and existing consumer protections. Over 2000 responses were received to the survey which asked how confident people were when taking out a credit agreement, how respondents had managed their debts in the past and where they had sought help and advice. The survey also asked for opinions on the current regulatory regime with a clear majority in favour of the Government taking additional action to protect consumers. All the responses received to the survey have been taken into consideration in the Government's response.

2.4 The Government is grateful for all the responses received and all the comments made. This paper seeks to reflect the views offered, although it is not possible to describe all the responses in detail. A list of those respondents who did not request confidentiality can be found at Annex C.

2.5 This summary of responses is available electronically at www.bis.gov.uk. You may make copies of this document without seeking permission. It may be possible to make other versions of this document available on request in Braille, other languages, large fonts and other formats. Contact the Departmental contact below for information:

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3. List of Acronyms and Abbreviations

APR - Annual Percentage Rate

ASA - Advertising Standards Authority

BIS - Department for Business, Innovation and Skills

CCA - Consumer Credit Act

CCAO – County Court Administration Order

CCD - Consumer Credit Directive

CCPIR - Consumer Credit and Personal Insolvency Review

CMC - Claims Management Company

CPR - Consumer Protection from Unfair Trading Regulations

CRA - Credit Reference Agency

DMP - Debt Management Plan

DRO - Debt Relief Order

ERO - Enforcement Restriction Order

FCA - Financial Conduct Authority

FIIC - Free if in Credit

FOS - Financial Ombudsman Service

FSA - Financial Services Authority

I&E - Income and Expenditure

ICB - Independent Commission on Banking

IRR - Interest Rate Restrictions

IVA - Individual Voluntary Arrangements

MALG - Money Advice Liaison Group

MAS - Money Advice Service

MOJ - Ministry of Justice

OFT - Office of Fair Trading

PCA - Personal Current Account

SIVA - Simplified Individual Voluntary Arrangements

TCE Act - Tribunals Courts and Enforcement Act

UOCs - Unarranged Overdraft Charges

UTCCR - Unfair Terms in Consumer Credit Regulations

4. Summary of Responses on Coalition Commitments

Bank Charges

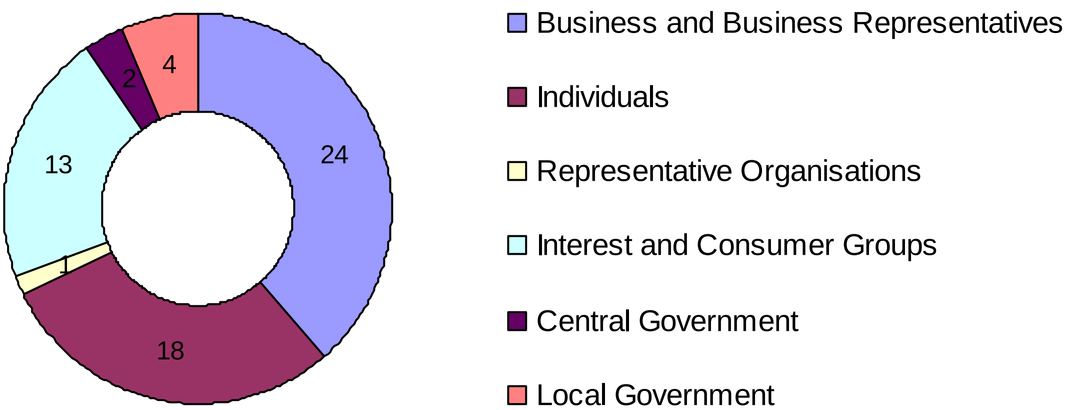
Introduction

4.1 The Coalition Agreement set out the Government's desire to end unfair bank charges. The Government has been concerned about the potential for consumer detriment in particular from unarranged overdraft charges (UOCs). Ministers have taken this issue very seriously and have been clear that the Government will not hesitate to act in the best interest of consumers.

4.2 UOCs were the subject of an OFT market study and a widely reported test case, which ended with a ruling by the Supreme Court in November 2009. The Supreme Court found that UOCs cannot be assessed for fairness under the Unfair Terms in Consumer Contract Regulations (UTCCRs).

4.3 The Call for Evidence asked for views on whether the current voluntary, market-driven initiatives to address concerns about UOCs are delivering sufficient improvements for consumers. It further asked about the wider implications of limiting bank charges.

Fig 2 – Responses on Bank Charges



Summary

4.4 By and large, banks and building societies argued that existing initiatives that were either market-driven or led by the OFT were already delivering real improvements for consumers, and that a legislative approach was not required and might lead to unintended consequences. On the other hand, consumer groups and some non-banking businesses tended to favour either further regulatory steps or some other action on bank charges to benefit consumers. Consumer groups were particularly concerned about the effect of

UOCs on financially vulnerable consumers, especially in situations where daily charges quickly accumulate.

Responses

4.5 Responses in favour of limiting bank charges felt that existing voluntary and market-driven initiatives did not go far enough to address concerns around UOCs, although the OFT initiatives were on the whole welcomed. A small number of responses referred to the Supreme Court judgement in 2009 and asked for legislation to make UOCs assessable under the UTCCRs.

4.6 In relation to recent market-driven initiatives, whilst the now increasingly common daily charging structures were welcomed as being easier for consumers to understand, there was some concern that they could in some cases be more expensive than one-off transaction charges. It was also noted that this charging structure could represent a loss of control particularly for financially vulnerable consumers who might struggle to avoid repeated daily charges. Under a daily charging structure, consumers need to have sufficient funds to credit into the account to stop charges from accruing rather than simply ceasing transactions.

4.7 Another observation was that, in general UOCs continue to affect consumers who are more financially vulnerable and that UOCs could exacerbate or create debt problems. A number of respondents also observed that it remained difficult to compare personal current accounts (PCAs). Finally, a small number of respondents pointed to recent OFT evidence that revenue from UOCs had not fallen significantly in recent years.

4.8 Some respondents questioned the fairness of the free-if-in-credit (FIIC) model, where a minority of consumers (including those who pay UOCs) cross-subsidise free banking for the majority (who do not tend to pay UOCs).

4.9 Some responses viewed payday loans as a sometimes cheaper alternative to an unarranged overdraft. They argued that banks and building societies should include information about APRs on their unarranged overdrafts. One response pointed to recent initiatives in the credit card industry, in particular a recently implemented voluntary package on five new rights for credit and store card customers and non-regulatory limits on charges that can be imposed on credit cards. They were concerned about this imbalance between PCAs and credit cards and thought that it was confusing to consumers.

4.10 Responses against any Government action on UOCs argued that existing voluntary and market-driven measures were sufficient to address any concerns, were already providing some real benefits to consumers and should be given time to embed. A number of responses highlighted recent innovations within the market that were providing consumers with better information on, and control over, their charges. For example, some banks and building societies were providing customers with simpler fee structures; more information about their charges, such as text or ATM alerts; and other improvements as part of the OFT voluntary work. These included new Lending Code standards for opting out of unarranged overdrafts and dealing with customers in financial difficulty, and a new annual statement of charges.

4.11 There was a widely held view amongst responses arguing against any Government action that the FIIC model was preferred by the majority of consumers, although others observed the difficulties for new entrants to enter the PCA market. If charges were limited through regulatory action on UOCs, banks and building societies might look for alternative income streams, including from customers who currently benefit from the FIIC model.

4.12 It was argued that imposing regulation to limit charges would not really help customers who struggled to control and manage their finances. Some responses further argued that limiting prices would be an intervention in a competitive market and that it would not support competitive market outcomes. Instead, responses proposed that more focused initiatives were desirable for consumers who use overdrafts in ways for which they were never intended. A number of responses suggested that further improvements to transparency and switching would deliver broader consumer benefits than any potential cap on charges.

4.13 It was pointed out that consumers were already afforded protection by existing and impending regulation and industry codes, including the Consumer Protection from Unfair Trading Regulations (CPRs), the Consumer Credit Act (CCA) and the Payment Services Regulations; as well as the Lending Code and various agreements on transparency that banks and building societies had reached voluntarily with the OFT. Those respondents felt that adequate information on charges was already provided to consumers both when they opened a new account and subsequently.

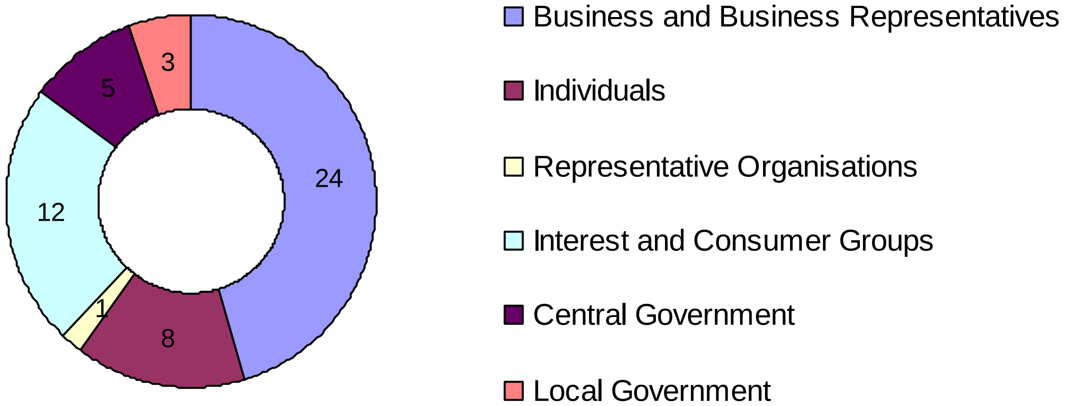
Cooling off Period on Store Cards

Introduction

4.14 The Government recognises that many consumers pay off the balance of their store cards within the interest-free period. However the Government is concerned that those consumers who do not pay off their balances within that period face a far higher interest rate than on similar products (on average 28% on store cards compared to 18% on credit cards) and that consumers may be enticed by discounts to take out and use a store card when this may not be the best way for them to take out credit or make a purchase. In its 2006 investigation of the store card market, the Competition Commission found that many consumers were signing up for a store card on impulse and were doing so because of the retail incentive offered on the day. The Competition Commission put in place a series of remedies to address this including improved provision of information for the consumer. However, the Government believes that consumers would benefit from having additional time to consider whether a store card is the right option for them. The Coalition Agreement proposes that a cooling off period for store cards should be introduced, prohibiting consumers from using a store card for the first seven days after they have signed up for the card.

4.15 The Call for Evidence asked for views on the impact of a 7-day cooling off period for store cards on (a) consumer behaviour and (b) store card providers.

Fig 3 – Responses on a Cooling Off Period on Store Cards



Responses

4.16 Some respondents welcomed a cooling off period on the grounds that consumers would have the opportunity to consider the terms and conditions of the store card and the longer term financial implications without being "blinded" by the discount or sales assistants' approaches. They would have the opportunity to reflect whether other forms of credit better suited their needs or even whether they needed to take out credit at all. Respondents believed that there would be less impulse buying but that those capable consumers who had planned their purchases would not be deterred by the cooling-off period.

4.17 Several respondents supported a cooling off period, especially in cases where the issuing of a store card was linked with a discounted purchase, because they felt a key issue was the sales approach by incentivised sales staff who had no training in selling financial products. They argued that a cooling off period would give consumers the opportunity to read the documentation and to reflect about taking out a store card away from a high-pressure sales environment. However, there was also a view that many consumers would not read product information even during a cooling off period.

4.18 Several respondents expressed concerns about the way in which store cards were issued. They argued that the key issues driving poor lending practices were discounts on initial purchases tied to issuing store cards and incentives for sales staff to issue store cards. Those respondents agreed that further measures were needed to protect consumers, and especially to give consumers more time to consider whether a store card was the right credit product for their circumstances. However, they did not believe that a cooling off period would address these concerns. Instead, they proposed that there should be a ban on discounted initial purchases that were tied to taking out a store card, so breaking the link between impulse purchases and instant credit.

4.19 Many responses from all categories of respondent questioned the rationale of the cooling off period. They argued that there was no evidence that consumers were being enticed into debt they could not afford through store card offers and they provided evidence indicating that store cards accounted for only a very small proportion of consumer debt and consumer complaints to FOS.

4.20 Several responses argued that a cooling off period would be detrimental to consumers needing emergency credit to buy essential items and that it would risk pushing them to seek credit from illegal lenders. It would also disadvantage vulnerable consumers for whom store cards offered a valuable opportunity to take out small amounts of credit, build up a good credit rating and ultimately access mainstream credit. It was also argued that responsible consumers who planned their purchases to benefit from discounts and who paid off their store card balance in full without incurring interest might be disadvantaged by losing out on initial discounted purchases.

4.21 Several responses warned about the risk of unintended consequences, such as a migration to other credit products, for example department store credit cards, that would not be subject to a cooling off period, and about store cards being put at a competitive disadvantage compared with other credit products, which might significantly reduce or even destroy the store card market.

4.22 Many respondents argued that recent changes introduced through legislation implementing the CCD should address many of the perceived concerns about consumers being encouraged to take out a store card without being able to afford or fully understand the product. They also maintained that the changes introduced by the CCD and other recent developments, including the OFT's Irresponsible Lending Guidance, should be allowed to take effect before any further legislative changes were introduced.

4.23 Some responses highlighted that the Competition Commission's investigation of the store card market in 2006 found no evidence of inappropriate influence by sales staff and made no recommendations about the sale of store cards apart from in relation to insurance bundling and direct debit facilities.

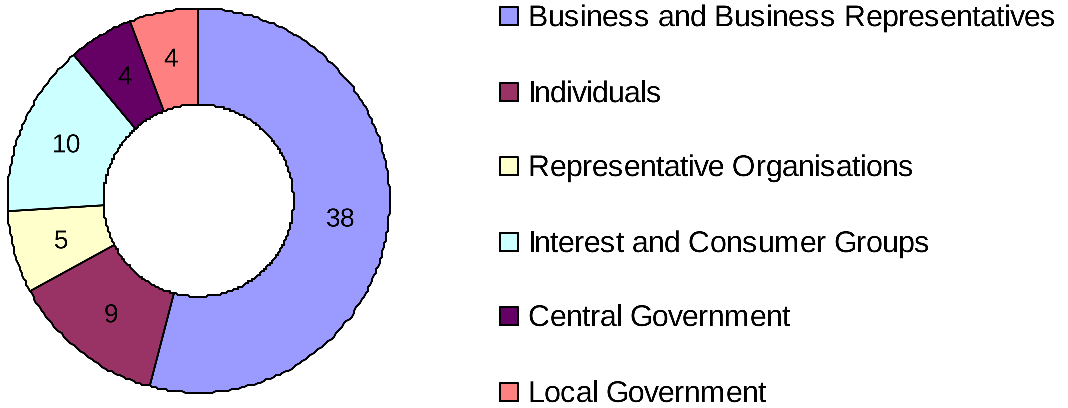
Interest Rate Caps on Credit and Store Cards

Introduction

4.24 The Coalition Agreement sets out the Government's desire to "give regulators new powers to define and ban excessive interest rates on credit and store cards". In the Call for Evidence, the Government sets out its concerns that interest rates on credit and store cards have continued to rise while base rates have fallen and that very high rates of interest are often targeted at consumers whose credit rating is impaired. The Call for Evidence asked:

> Q9: Should interest rates on credit and store cards be subject to a cap? If so, should this apply to all interest rates or only those which apply to existing borrowing?
> Q10: Are there any alternative measures which would reduce the scope for consumers to be exposed to higher interest rates on credit and store cards?

Fig 4 – Responses on Interest Rate Caps on Credit and Store Cards



Responses

4.25 Responses in favour of interest rate caps being introduced were not all commenting specifically in relation to credit and store cards, but more generally in relation to high cost credit. Some respondents included personal anecdotes about credit-impaired borrowers being exploited by high interest rates. Others pointed – again in relation to all high cost credit products, rather than specifically to credit and store cards – to the example of other countries capping the rate of interest that firms could charge on their loans or the repayment and administration fees they apply.

4.26 A few respondents also thought that additional measures could improve the situation for consumers. There were a number of suggestions and these could be broadly split into two groups: a) measures to improve information and transparency; and b) measures to improve consumer protection. In the case of the former, some responses called for improvements to the transparency of information given to consumers, including in statements, in the terms and conditions, and on online comparison tools. A small number of respondents also thought that credit and store cards should not have different rates of interest on the same card and there were pleas for the use of clearer language more generally. In the case of measures to improve consumer protection, suggestions included limiting the number and amount of fees levied on an account, providing new basic credit products for more vulnerable consumers, and better promotion and access to credit unions.

4.27 Nearly all the responses however were against a cap on interest rates for credit and store cards. A number of key arguments were cited. Respondents noted that an interest rate cap would distort competition. It would reduce the number of cards on the market as some businesses would be forced out of the market and it could also lead to a levelling up of the interest rate towards the cap. They also argued that a cap would be likely to have a detrimental impact on consumers, particularly on lower income, financially vulnerable consumers, by limiting their access to mainstream credit and pushing them towards higher cost credit and potentially to illegal lending. A number of respondents commented that there was insufficient evidence to show that a cap would actually deal with the problems it was supposed to address nor that it would produce any significant benefits for consumers. Others expressed concern about reduced transparency as lenders would attempt to seek ways of getting round a cap, for example by introducing other types of charges that were not included in the APR rate. Some respondents felt that there was a lack of proportionality in considering interest rate caps for credit and store cards though not for other forms of high cost lending, and they were concerned about the distortive effect this could have on the credit market more widely.

4.28 A number of respondents also argued that there was no need for alternative measures to reduce consumers' exposure to high interest rates on credit and store cards. By and large they felt that the five new rights for credit and store card consumers agreed voluntarily by the industry last year[5] were sufficient and they opposed any further measures in this area. Some argued that, at the very least, the existing voluntary measures should be allowed to bed-in and an assessment made of how they are working in practice before any additional measures on credit and store cards were considered.

4.29 Finally, a small number of responses addressed the Government's concerns about the divergence between the interest rate on credit and store cards and the base rate. They noted that interest rates represented only part of the cost of the credit or store card and that some of these additional costs had been exacerbated by the financial crisis. Factors contributing to the cost of lending included greater capital requirements on banks, more costly wholesale borrowing and more high risk consumers.

5. Debt Advice and Collective Solutions for the Debtor

5.1 This section asked for evidence and opinions on what was working well in the personal insolvency and debt management market and what could be changed to make the current systems work better for both debtors and creditors.

5.2 Of the 216 substantive responses to the Call for Evidence, 118 commented on the questions relating to personal insolvency, questions 15 to 31.

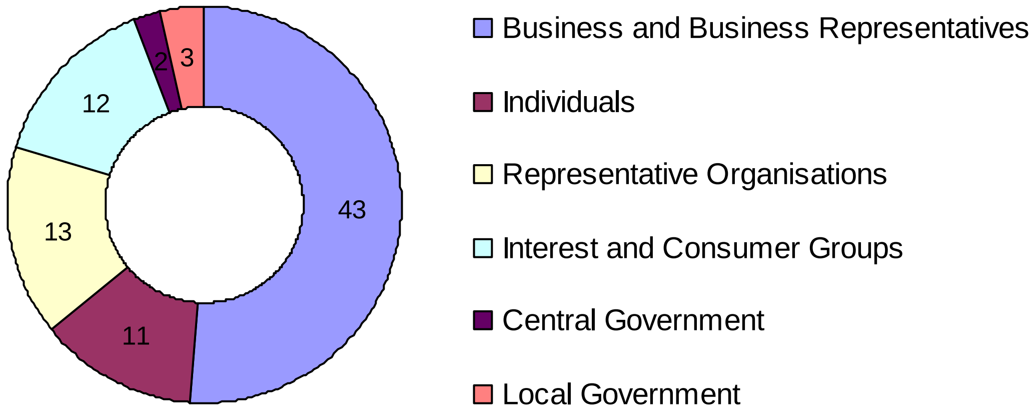
Debt Advice

5.3 When consumers run into financial difficulties, debt advice plays a key role in helping them manage their debts. It is important that consumers know where to go to for appropriate advice, and that they take action at an early stage. The Call for Evidence asked:

> Q15 – How can debtors be encouraged to seek early support to help manage their debt problems?

[5] http://www.bis.gov.uk/assets/biscore/corporate/docs/c/10-808-consumer-credit-store-cards-joint-commitment.pdf

Fig 5 – Responses on Debt Advice



Responses

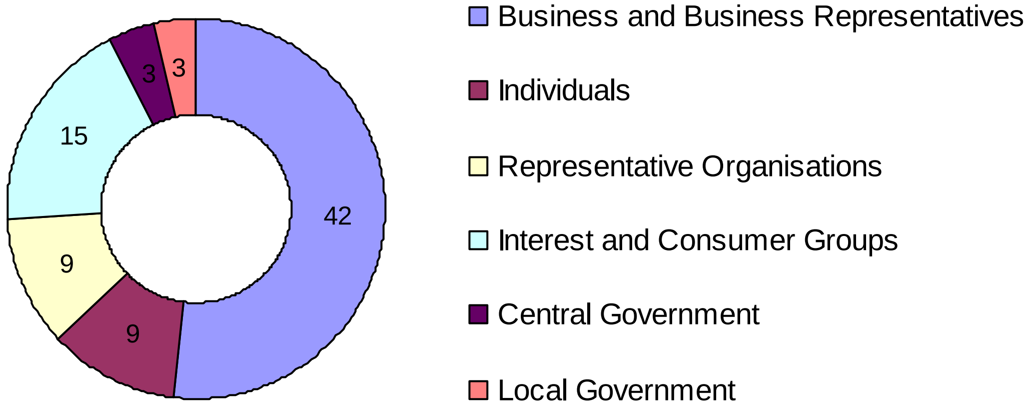
5.4 All groups recognised that if a lender had evidence to suggest that an individual was beginning to struggle with repayments, they should intervene as soon as possible to direct the individual to a reputable debt advice provider. It was acknowledged by most groups that some lenders already proactively prompt debtors to seek such advice but it was felt that this practice was not consistently applied. Many respondents also pointed out that early intervention might not actually result in the individual seeking advice, as the individual might feel embarrassed or fail to recognise the seriousness of their situation. Some responses also referred to the need for financial education to ensure that consumers were better placed to apply only for credit that they could afford to repay. The importance and value of free face-to-face debt advice was highlighted, as were concerns that any reduction in funding for debt advice would affect the most vulnerable debtors.

Range of Debt Solutions

5.5 It is inevitable that some consumers will find themselves unable to meet their financial commitments. The Government is committed to ensuring that when this happens debtors are in a position to make sensible decisions about their financial situation without being exploited by rogue operators. The Call for Evidence asked a number of questions covering the range of debt solutions available to consumers:

> Q16 - Do the current debt relief options strike the right balance between the needs of the debtor and the rights of creditors?
> Q.17 - What problems are encountered with the current range of debt solutions and how could they be improved to ensure all debtors have an option and that the choices are clear?
> Q.18 - Is there sufficient flexibility within the current range of debt solutions to allow for debtors changing circumstances?
> Q21 - Is some form of moratorium on creditor action required to a) allow a short time period for a debtor to seek and act on advice from a qualified adviser and b) allow a more extended period for a debtor suffering from a temporary difficulty to recover and start making repayments once more. If so, how might such an arrangement work?

Fig 6 – Responses on the Range of Debt Solutions



Responses

5.6 All groups provided some support for the view that the current range of options struck a reasonable balance between the needs of the debtor and the rights of creditors. It was recognised however that there was some overlap between the various options and some respondents expressed the view that the range of current solutions was too complex and could contribute to confusion over which was the best solution for the debtor.

5.7 Some respondents commented that there were circumstances for which none of the existing options were suitable, particularly where household budgets were in deficit based on essential expenditure alone. In other words, there was no income surplus after essential expenditure to support a debt repayment solution and the entry cost for bankruptcy was unaffordable. The suggestion was that here the only option was to try to increase income.

5.8 Other respondents did not think that the current options always allowed and encouraged those who were in a position to repay their debts to do so.

5.9 The principle issue concerning the range of solutions available to debtors was the quality of advice, which could vary significantly. It was recognised that there are some very high quality advice providers. However there were also concerns that some commercial advice providers steered individuals towards solutions that were aimed more at generating income for the provider than providing the best solution for the debtor. This concern was generally directed at those commercial organisations who could only provide a debt management plan (DMP).

5.10 DMPs caused concern amongst all respondents. Some respondents felt that debtors were only making token payments and that the DMP was not really a viable option for dealing with their indebtedness. The regulation of DMP providers was also raised as a significant concern and some respondents felt that there should be a single regulator who should cover all of the current debt resolution options. Others expressed concern that not all lenders froze interest and charges when an individual entered into a DMP. Many of those who responded thought that there was too much room for variation in the way DMPs were set up and operated.

5.11 There were mixed opinions on whether there was sufficient flexibility within the current range of debt solutions to allow for a debtor's changing circumstances. The majority of respondents did not think the current options dealt effectively with a temporary income shock and a majority suggested that some further form of moratorium on creditor action was required. Many made reference to the Enforcement Restriction Order (ERO) as proposed in the TCE Act 2007, and suggested that this, or a variation of it, should be brought in, provided appropriate safeguards were in place to protect creditor interests.

5.12 Some respondents felt that the current insolvency regime was too debtor-friendly, allowing debtors to choose the easiest option, not repaying as much of their debt as possible back to the creditor.

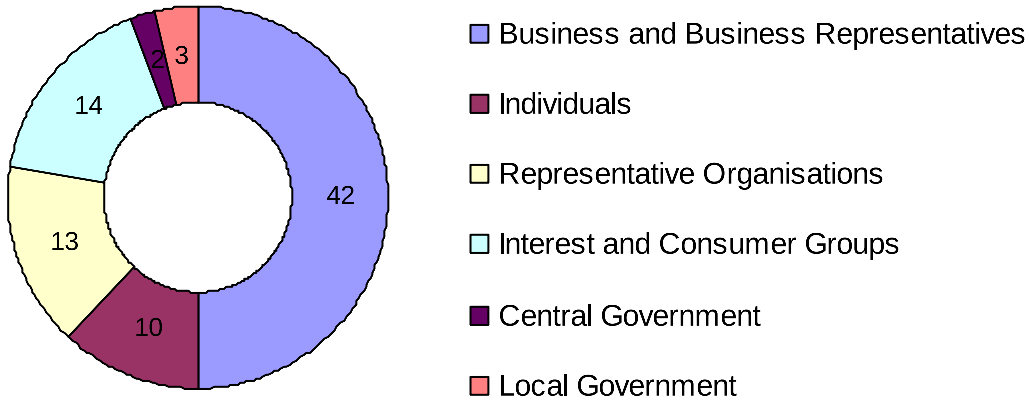
5.13 Other respondents felt that lenders exercised too much control in individual voluntary arrangements (IVAs) and either voted against or required amendments to reasonable IVA proposals. Some respondents suggested reducing the voting majority at a creditors' meeting to a simple majority for straightforward consumer debt IVAs, as proposed in an earlier consultation on the simple IVA (SIVA).

Access to Debt Solutions

5.14 There are in excess of a million consumers each year seeking advice on how best to deal with the financial difficulties they face. The range of possible solutions on offer and the number of different agencies prepared to offer advice can make it difficult for debtors and those advising them to decide on the best way forward. The Call for Evidence asked how debtors currently access the range of solutions on offer and the problems they encounter in doing so. The Call for Evidence asked a number of questions covering these issues:

Q22 - How does a person find out where to go for debt advice and assistance? What are the advantages and disadvantages of each method?
Q23 - How does a person know that he/she has been given the 'right' advice?
Q24 - What evidence do you have to suggest that debtors end up in the 'wrong' solution and what is the scale and impact –for the debtor, the creditors, the economy?
Q25 - Is it clear in all circumstances what the 'right' solution should be?
Q26 - How often do debtors move from one remedy to another and could the costs be reduced in any way?

Fig 7 – Responses on Access to Debt Solutions



Responses

5.15 All groups felt that if a lender identified that an individual was beginning to struggle with repayments then they should intervene to direct the individual to a reputable debt advice provider. It was recognised by most groups that some lenders already did this but it was felt that this was not a consistent approach.

5.16 However many respondents also recognised that early intervention might not actually result in the individual seeking advice, as the individual might feel embarrassed or feel that their problems were not serious enough to warrant help from external parties. Other respondents were concerned that despite efforts to make debtors aware of free advice services, many of them only sought advice at a late stage, thus limiting the options available to them.

5.17 Many respondents considered that better financial education was needed to ensure that consumers were better placed to understand fully the implications of taking on credit and to make a realistic assessment of their ability to repay.

5.18 An issue highlighted by respondents was that a person often would not know whether they had been given the 'right' advice, and this reinforced comments made throughout the consultation responses that the main issue in accessing appropriate solutions was to ensure that the best possible advice was obtained. It was also pointed out that debtors with similar financial circumstances could be given different advice and solutions depending on which organisation they had approached or which agency, branch or bureau of the same organisation the debtor might have used and even which individual advisor gave the advice.

5.19 A number of respondents highlighted that the issue of ensuring that high quality advice was available was closely linked to ensuring there were recognised and respected qualifications for debt advisors/organisations. Respondents felt that a nationally recognised kite mark awarded to those advice agencies who met the highest standards of debt advice would be beneficial to debtors.

5.20 Respondents felt that debt advisers had differing views on what the 'right' solution should be in particular circumstances. Some felt that this was because that there was not enough quality advice provided and that the current range of options was complex and confusing. It was felt that some commercial advice providers steered clients towards solutions that generated income for the provider rather than having the debtor's best interests at heart, and they suggested that there needed to be more emphasis on the regulation of providers or a better qualification regime for advice providers.

5.21 All respondents agreed that some movement of debtors between different debt solutions was inevitable and that it was not uncommon for debtors to move from making payments through a DMP to eventually agreeing an IVA with their creditors. This could occur where an advisor initially considered that an IVA would not receive the requisite support from creditors, based on their knowledge of the requirements of certain creditors and the criteria laid down by them or their appointed agents. It was also pointed out that creditors might quite legitimately wish to see a proven track record of payment, before agreeing to write off some of their debt via a formal insolvency procedure. Concerns about the movement of debtors from one procedure to another focused on those occasions where the costs to the debtor were increased as a result, for example where a separate fee was charged by the provider for entering the second procedure despite much of the work having already been done whilst setting up the initial procedure.

5.22 Some respondents considered that movement between solutions was indicative of poor quality of debt advice in circumstances where the debtor was clearly wrongly advised in the first instance and was later moved to a solution which should have been the preferred option in the first place. Respondents suggested that on occasion the advice received was deliberately misleading and aimed at maximising profit for the adviser organisation. It was pointed out by others though that poor advice was not restricted to the fee-charging providers, and could on occasions be linked to poor quality training of advisers.

5.23 Responses also stressed the importance and value of free face-to-face debt advice and some expressed the view that any reduction in funding would affect vulnerable debtors who were most in need of face-to-face provision. Respondents felt that debt advice needed to be accessible and that advice could be provided in a number of ways – not just on the telephone, but also face-to-face in the locations that people need it e.g. GP surgeries and hospitals, libraries, in prison and in court.

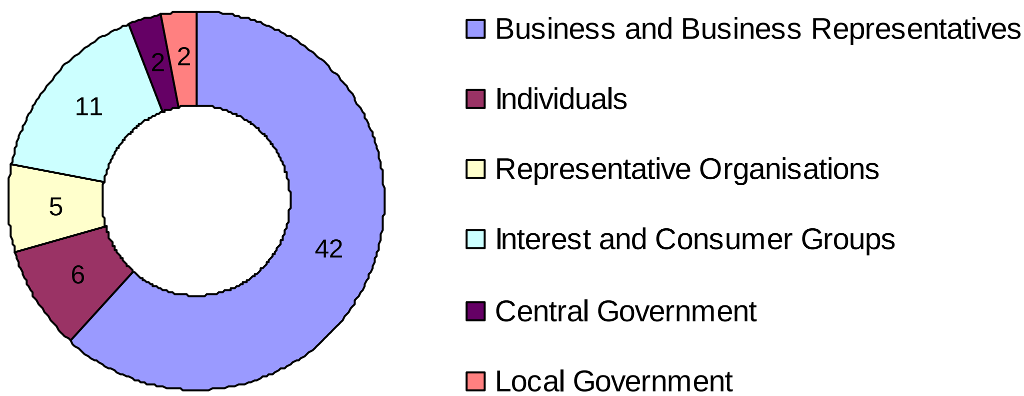
Consistency across Debt Solutions

5.24 The Call for Evidence asked for views on the degree to which inconsistency exists in how debtors are treated across the various debt solutions. This could involve the initial assessment of the debtors financial circumstances and how his/her surplus income is calculated; the way in which the debtor's financial affairs and conduct are examined; whether any enforcement action is taken; and the barriers to debtors becoming economically active again once they exit their chosen form of debt solution. The Call for Evidence asked five questions that sought views on whether the Government should strive for greater consistency in these areas or whether the differences are justified:

> Q27 - Should there be more consistency on how a debtor's income, assets and expenditure are calculated and treated in different procedures?

Q28 - Should any changes be made to improve the consistency of investigation and enforcement action in relation to debtors entering insolvency procedures?
Q29 - What outcomes should such investigations be looking to achieve – for example, should they just relate to restrictions on future conduct or should they also impact on discharge from liabilities?
Q30 - Are the practical effects of entering the different debt remedies satisfactory e.g. future access to financial services? Should this be influenced by the outcome of any investigation/enforcement?
Q31 - Is there a role for a "gatekeeper" to provide a common entry point to all formal insolvency procedures? If so, what would be the benefits and costs, who would perform such a function and how would the system operate?

Fig 8 – Responses on Consistency across Debt Solutions



Responses

5.25 All respondents tended to agree that more consistency could be achieved across all debt solutions in how a debtor's income, assets and expenditure were calculated and treated. There was significant support for the concept of the role for a 'gatekeeper' to provide a common entry point to all formal insolvency procedures, although there was no agreement amongst respondents in how this role might work, how it would be funded or who would be responsible.

5.26 Some respondents felt that the current Common Financial Statement could be expanded to provide more details of assets so that it provided a single recognised Income and Expenditure (I&E) budget tool. Other respondents felt that current guidelines could be improved to work more effectively for debtors who were not on a low income.

5.27 All respondents showed support for more sophistication in credit scoring, so that this recognised that some insolvency procedures were more 'serious' than others. Respondents felt that it was striking that for most debt options, the effect on the person's credit rating was similar whether they went bankrupt, entered a DMP or a formal agreement.

5.28 There was no clear consensus amongst respondents regarding the questions on consistency of investigation and enforcement action in relation to debtors entering insolvency procedures and on what outcomes such work should seek to achieve. A minority of respondents thought that the current enforcement regime should be strengthened to ensure that those taking advantage of debt relief options were not abusing them through reckless financial behaviour or misconduct. However, no comment was offered on how such work should be funded. There were also those who would not want to see investigative processes restricting a debtor's discharge from his/her liabilities. Some respondents referred to the same negative impact on a person's credit rating whether he/she was in bankruptcy or an IVA. They believed that this did not incentivise a person to repay their debts.

5.29 Respondents highlighted the number of Government departments and agencies that are involved to some degree in regulating formal and informal insolvency procedures and court-based debt recovery processes. Some respondents believed that consistency could be more readily achieved if all consolidated their functions under a single organisation.

5.30 Other respondents felt that the introduction of a gatekeeper role could ensure that debtors were made aware of their options and did not make decisions when under pressure. This would involve all those suffering from debt-related problems being channelled through one organisation (the gatekeeper) which would be responsible for assessing the most appropriate debt solution route for them to follow, and would refer them to other agencies or organisations as appropriate. Other respondents felt that the debtor should have the option of applying to the courts or the Insolvency Service for a moratorium from creditor action, during which time they would be required to seek advice from impartial financial advisors who did not have an interest in promoting a particular solution.

5.31 Some respondents wished to see enhanced access to financial services after entering into an insolvency procedure, and considered that in some instances, the restrictions on accessing financial services were too harsh. In particular there were calls for greater access to basic bank accounts for undischarged bankrupts.

The Government's Response

5.32 It is inevitable that some people will fall into financial difficulties. When they do, we want them to be empowered to make the right decisions about their finances for themselves and for them to have access to the appropriate debt advice and assistance that they need, at the time they need it. For this to work, consumers will need to be able to recognise when they need help; they need to have the incentive to do something about it; they will need to know and understand the options available to them; and they will have to be able to access the most appropriate solution. At the same time, creditors should have the appropriate channels to pursue those debtors who are choosing not to repay a debt or not to take any action with regard to that debt.

5.33 In the responses received, there was surprisingly little comment or evidence about the individual insolvency options themselves. This suggests that either there is no evidence to warrant an urgent re-structuring of the current framework or alternatively as some have suggested that the evidence is not readily available. There are some who believe that our framework is too debtor-friendly and that this encourages people to choose "the easy option" rather than repaying as much of their debt as possible. Equally, the view has been expressed that some of the current options allow creditors too much control in their desire to see higher levels of repayment. However, the overall view is that the current options do provide a balance between debt write-off and relief and reasonable/fair levels of debt repayment.

5.34 The Government recognises debt advice as an important element in ensuring that people can manage their money better and to ensure that they access the most appropriate debt solution, if that becomes necessary. Appropriate financial advice is an enabler to help consumers make the right decisions at all stages of the consumer credit life cycle. The Money Advice Service (MAS) is a new nationwide service that provides free, unbiased advice to help everyone make the most of their money. It does this by offering personalised and practical money advice online, over the phone and face-to-face. The MAS was set-up by the Financial Services Act 2010 to deliver the 'public awareness' objective that was previously a responsibility of the FSA, but with an expanded remit to deliver advice and to help people manage money better. After a transition phase as the Consumer Financial Education Body, the MAS was launched on 4 April 2011.

5.35 The MAS, with its consumer financial education remit and national reach, is well placed to take a role in the coordination of debt advice services as part of its existing services. Their Board has agreed that the MAS will take on a direct role in debt advice, with the aim of offering a coordinated, flexible and cost-effective solution to consumers' debt advice needs from 2012-13 onwards.

5.36 The MAS has a statutory function to enhance the understanding and knowledge of members of the public regarding financial matters and to enhance the ability of members of the public to manage their own financial affairs ("the consumer financial education function"). This function includes, among other activities listed in statute, the provision of information and advice to members of the public. While the consumer education function would allow the MAS to deliver debt advice as part of its current statutory function, we propose, as part of the forthcoming Financial Services Bill, to include the provision and coordination of debt advice specifically in the list of activities which the MAS can carry out, as part of the consumer financial education function. This clarification will reflect the importance of debt advice as part of the MAS's overall remit. The Government will consult with industry and debt advice providers on this proposal shortly

5.37 The MAS will review the current landscape in detail and clarify the outcomes desired by those who seek to access debt advice services. They will conduct further work to understand the desired outcomes that debt advice should deliver, and map those outcomes onto existing resources to identify any gaps. The MAS will then seek to develop a model which ensures that debt advice outcomes can be delivered in an effective, efficient way.

5.38 We are mindful of the concerns expressed that there are some providers who are driven primarily by profit in the advice that they offer and believe that the work being done about debt advice will help alleviate this problem by ensuring much greater public awareness of impartial free debt advice sources.

5.39 Some responses called for a statutory debt management scheme and referred to the provisions contained in the TCE Act 2007. These give the power to approve operators of Debt Management Schemes and to make regulations about such schemes. We note, however, that debt management businesses are already licensed under the Consumer Credit Act regime with regard to their provision of debt advice and that the OFT has strong powers to tackle unfair business practices and behaviours. We are also conscious that IVAs are already available as a statutory scheme that binds creditors, freezes interest and ensures that creditors take no further enforcement action against a debtor provided they continue to make their repayments.

5.40 It appears that debtors and creditors may see some advantage in coming to an arrangement without recourse to the formality of an IVA, and that increasing numbers of DMPs are being entered into as a result. We think it is right to continue to monitor practice and behaviours in this area, and to seek to improve our knowledge and understanding of the debt management field. As there are clearly continuing concerns, we do not rule out the possibility of further statutory action in this area, and propose that the current order making powers in the TCE Act 2007 remain in place for the time being.

5.41 We note that there is the potential for the landscape to change in this area following the recent BIS/HMT consultation on transferring responsibility for consumer credit regulation from the OFT to the new Financial Conduct Authority.

5.42 In recognition of the concerns that have been expressed, and in keeping with the Government's commitment to pursue change via non-regulatory routes wherever possible, we will work with the various players within the DMP industry to improve current standards. The Government proposes a series of cross-industry meetings to work up a Protocol setting out what all parties can expect from a DMP. This would work alongside the OFT's recently revised draft guidance, which sets out the standards the OFT expects of debt management businesses, but will be broader in scope as it will encompass the creditor community. Such engagement, however, to consider non-regulatory approaches does not mean we have reached any final conclusion not to regulate in any particular area of debt advice.

5.43 The OFT's revised draft debt management guidance sets out the standards the OFT expects of debt management businesses and makes clear they should, amongst other things:

- be fully transparent about the service on offer and fees charged
- explain to consumers both the risks and benefits of each proposed solution
- not use misleading names or advertising, including misleading web-based adverts, and
- ensure that the advice provided is in customers' best interests.

5.44 As mentioned above, the Government recognises that not enough is known about this industry – from the exact number of DMPs that are in existence at any one time, through to the proportion of them that repay in full and the proportion that fail and what happens to the debtor thereafter. This lack of knowledge has been reflected in the paucity of evidence stakeholders were able to provide in responding to the Call for Evidence. We will seek to ensure that the gaps in our knowledge are addressed, if necessary by commissioning research in this area.

5.45 The Government believes that these measures outlined above will begin to address the two main concerns identified in responses to the Call for Evidence: recognising the importance of free and independent debt advice; and concerns regarding the debt management industry though there is much more work to do before we can be sure this approach is comprehensive enough. However, the Government also believes that there are other measures that should be taken to assist consumers in difficulties.

5.46 In this context the Government will launch a consultation on increasing the petition debt levels for creditors. Whilst we believe that bankruptcy is the right debt remedy tool in certain circumstances, it should not be used by creditors as a ‘threat’ to a consumer where relatively modest levels of debt are involved. The petition debt level has not been increased since the Insolvency Act first came into force in 1986 and so remains at £750. To be able to threaten someone with bankruptcy for such a small amount is, we believe, disproportionate. The consultation will also cover increasing the petition debt level in corporate cases.

5.47 Whilst the current range of debt solutions is not seen as perfect, little strong evidence has been offered to suggest that a complete overhaul is required or would bring substantive benefit. However, the Government recognises the concerns about the potentially confusing number of possible debt solutions available to someone experiencing financial problems and proposes that when legislative opportunity allows, the Deeds of Arrangement Act 1914 be repealed as such Deeds have fallen into disuse. In addition, it is our intention to consult on whether the provisions in relation to County Court administration orders (CCAOs) should be repealed, as the numbers entering a CCAO are rapidly declining, with just over 5,000 currently in existence.

5.48 A number of respondents said they would like to see a further option available for a debtor experiencing ‘temporary’ income shock, although none of the responses fully defined ‘temporary’. Some of these responses referred to the ERO enabling power contained within the TCE Act 2007. The Government notes the idea of introducing a statutory moratorium procedure for debtors to enable them to take advice and organise their financial affairs in the future, but believes that non-statutory routes should be explored to achieve this end, and that the case for an additional court based process had not yet been made. Any such statutory procedure would need to satisfy creditors and lenders that there were sufficient safeguards in place and an effective monitoring process during the moratorium to ensure that people did not abuse the procedure to escape from action by creditors and sell their assets. Such safeguards were mentioned by all those advocating an ERO-style moratorium, but would be costly to implement.

5.49 Existing voluntary codes already encourage financial creditors to offer a 30-day ‘breathing space’ from action, and require that care should be taken not to leave debtors in a ‘temporary’ solution for too long as that can lead to more problems. In addition, paragraph 7.12 of the OFT’s Irresponsible Lending Guidance makes clear that the OFT consider failing to offer such a breathing space may be deemed as irresponsible lending. The Government believes that the best way forward at present is to work with the industry to try to build on the existing voluntary codes on forbearance where debtors need a breathing space in order to seek debt advice or to recover from a temporary income shock. Officials will also seek to engage with non-financial creditors, including local authorities and government departments, to assess the scope for widening the impact of the current voluntary forbearance scheme.

5.50 Financial rehabilitation following bankruptcy can be an unduly lengthy process, and a number of stakeholders commented on the difficulties a bankrupt can experience in operating even a basic bank account facility. The lack of a banking facility has a definite financial impact. Households that are managed solely on a cash basis are unable to make savings via direct debit on utility bills and cannot shop online for competitively priced goods and services. They are more vulnerable to loss or theft and they are far more likely to use the sub-prime credit market. Lack of such facilities also causes difficulties with receiving money as the majority of employers pay direct into a bank account. The banks tell us that they would be willing to offer such facilities were it not for the risk of becoming liable to claims by trustees in bankruptcy relating to property acquired by a debtor during the course of the bankruptcy. In recognition of this, the Government will be issuing in due course a consultation to seek views on amendments to insolvency legislation to address this perceived risk. It is hoped that these proposals will offer the prospect of greater financial inclusion for potentially thousands of people.

5.51 The Government also recognises the concerns expressed about a negative impact on a debtor's credit rating and will continue to work with CRAs and the lending community to ensure that they are aware of the full implications of each insolvency procedure and the differences between them. We recognise, of course, that those decisions are commercial ones, but believe that they should be made based on a full understanding of the relevant circumstances.

6. Summary of Responses on other Consumer Credit Issues

High Cost Credit

Introduction

6.1 This section contains details of the responses received to the recommendations made as part of the OFT review of the high cost credit market, questions 4a to 4e in the Call for Evidence and the responses on how effective the remedies put in place by the Competition Commission in the Home Collected Credit market had been.

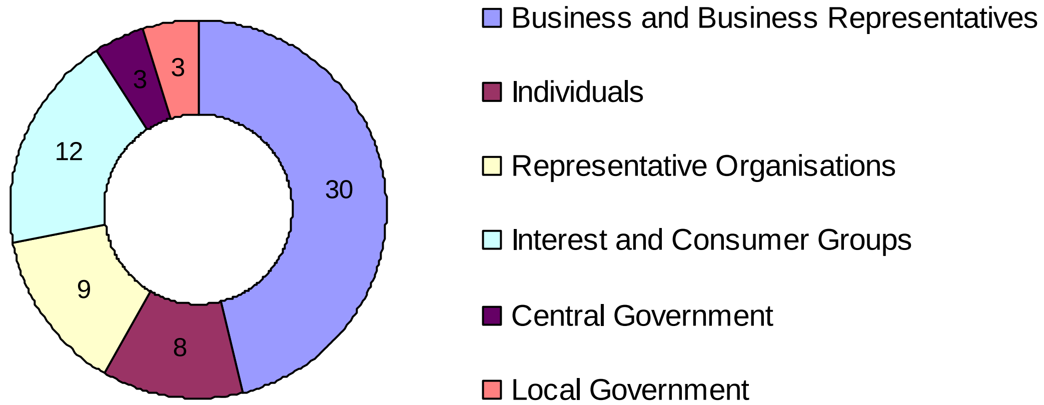
6.2 Following publication of the Call for Evidence over 1800 submissions were received that called upon the Government to introduce controls in the high cost credit market to limit the interest being paid by consumers. Although not specifically covered in the Call for Evidence around 76 submissions were received on introducing interest rate restrictions (IRRs) in the high cost credit market, including 29 submissions from Members of Parliament.

6.3 The Government believes that sufficient evidence exists, including the OFT review of high cost credit, the Competition Commission investigation into the home collected credit market and the research carried out by Policis for the then Department of Trade and Industry, to show that introducing a flat rate cap on interest rates would in all likelihood be detrimental to consumers, reducing the availability of credit for higher risk borrowers and potentially pushing some people to resort to illegal lending.

6.4 The impact of a total cost of credit cap that distinguishes between high cost credit products was not specifically addressed in the Call for Evidence. The Government accepts that little evidence exists on the impact of this proposal though the subject was covered in research carried out for the European Union[6] and by Policis in their recent research on credit and low income users.

6.5 The Government believes that additional research on the impact of a total cost of credit cap in the high cost credit market would be beneficial and will commission research to establish the impact on lenders and borrowers of introducing a variable rate cap on the total cost of credit that can be charged in the short and medium-term high cost credit market.

Fig 9 – Responses on High Cost Credit



Question 4a

6.6 That the Government works with lenders to provide information on high-cost credit loans to consumers through price comparison websites

Responses

6.7 Some respondents supported the proposal on the grounds that consumers could search for loans without having to use loan brokers, many of whom took up-front fees and did not always obtain a suitable loan. Others supported it on the grounds that consumers suffered from a lack of information about the total cost of their loan and had difficulties comparing loans to make an assessment of what type of loan was right for them at that particular time.

[6] http://ec.europa.eu/internal_market/finservices-retail/docs/credit/irr_report_en.pdf

6.8 Responses against the proposal came from all categories of respondent. One argument was that a web-based option was not appropriate for borrowers of high-cost credit. It was also highlighted that the OFT's own study had shown that consumers in the high cost credit market were not price-sensitive and that there was no evidence that information on prices had any impact on the purchasing behaviour of consumers using the high cost credit sector.

6.9 Other respondents argued that there was already sufficient information available on the internet concerning different credit products, and that setting up and administering such a website would be costly and complex and would not deliver any real benefits to consumers. It was also argued that there was little evidence that the price comparison website for home-credit had delivered benefits to consumers.

Question 4b

6.10 That the Government explores whether there is scope under the European Consumer Credit Directive for a requirement that high-cost credit suppliers must include 'wealth warning' statements on advertisements for high-cost credit.

Responses

6.11 Those in favour of the proposal argued that that consumers were often unaware of how much credit cost and that warnings on unsecured lending could be used to alert consumers to the potential costs and implications of borrowing. One suggestion was for all credit products to carry a traffic light type warning so low cost credit carried a green signal while high cost credit type products carried a red warning. Other respondents agreed in principle with the intention behind the proposal, but highlighted existing requirements about adequate explanations and responsible lending, arguing that wealth warnings could not be a substitute for an adequate explanation of the product at the point of sale.

6.12 Respondents against the proposal raised concerns that too much information in a credit advertisement would lead to the danger that consumers would not read it and would be confused by information overload. Another concern was that requiring additional warnings would 'gold-plate' the CCD, and should therefore not be implemented, and that requiring warnings on low-value loans would be disproportionate compared with the consequences of non-payment of large secured loans from mainstream lenders.

Question 4c

6.13 That the Government works with credit reference agencies to explore ways in which payday lenders and rent-to-buy suppliers could provide suitable information to credit reference agencies about the payment performance of their customers, in turn allowing customers to build up their credit rating.

Responses

6.14 Reasons given in favour of the proposal included the fact that a number of payday lenders already shared data with credit reference agencies (CRAs) and that data sharing enabled lenders to make more informed lending decisions, thereby helping to prevent over-indebtedness. Many respondents felt that additional information would help build a fuller picture of their customers' credit profiles, thereby helping lenders to ensure they lent responsibly and at a level each individual customer could afford.

6.15 Many of those who were against the proposal were not convinced that consumers would be able to build up a credit profile that would help them access mainstream credit, as many consumers used short-term unsecured loans sporadically to address periods of financial difficulty. In addition mainstream lenders were generally looking for consistency in repayments over a longer term. There were also concerns that this would impose unnecessary burdens on business, especially on small businesses, and that, as some short-term lenders declined up to 90% of loan applications now, those that were accepted for a loan would end up paying increased fees to cover the costs of increased data-sharing.

Question 4d

6.16 That the OFT collects essential information on the high-cost credit sector, such as the volume, value and pricing of credit, levels of repeat business and defaults among customers, as needed. This will help the OFT understand the effect of its recommendations and provide better evidence for future policy making

Responses

6.17 Many of those in favour of the recommendation felt that it would be beneficial for the OFT to understand the market better and that a regulator should have comprehensive information on the markets it oversaw. Many also thought a better understanding of the market would lead to a better outcome for consumers and that the recommendation would also align with the FSA data-gathering exercises.

6.18 There were concerns amongst some respondents that the proposal would lead to increased burdens for business with little benefit, especially for small businesses. There were also concerns that until the future regulatory regime had been confirmed it would be better to leave it for a new regulator to make the decision on what information they required to regulate the market properly. Concerns were also raised about the cost of ensuring that the commercially sensitive information required was stored securely.

Question 4e

6.19 That the relevant trade associations for home credit suppliers, payday lenders and pawnbrokers establish a code or codes of practice covering best practice policy in a number of areas, including complaints processes and advice to customers, policies on rolling over of loans, rules of thumb on typical limits for amounts to lend to consumers, guidance on avoiding misleading consumers through advertisements and steps to ensure that consumers are aware of the ultimate owners of the brand.

Responses

6.20 Most respondents were in favour of the proposal as a way of ensuring better consumer protection in the market; it was highlighted that many businesses and trade associations already had their own codes of conduct and these had worked well, for example home-collected credit and pawnbrokers. Most support was for a code of conduct to be introduced in the payday loan industry as this was the sector seen as most lacking in transparency for consumers with regard to charges and penalties for late payment. In response to the recommendation one trade association in the payday loan sector had set up a forum to discuss introducing a code.

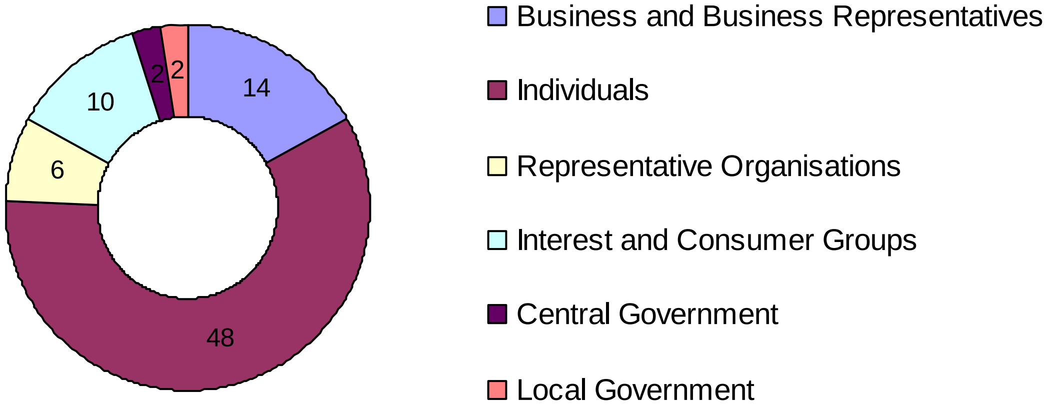
6.21 Some respondents felt that there would be competition issues if the Government required a code and was over-prescriptive in what it should contain. There were also concerns that many lenders operated in several sectors of the high cost credit industry and could end up having to comply with several different codes. Respondents highlighted the risk of unintended consequences and that the Government should be moving away from a 'tick box' approach. Respondents would not welcome a move towards a unified code of conduct for the high cost credit industry as there are a number of industry trade associations who already operated their own codes. Some respondents also felt that voluntary codes of conduct had limited effectiveness and were rarely a substitute for regulation as the worst practices were often pursued by companies that did not belong to a trade association.

Home Collected Credit

Introduction

6.22 Question 11 in the Call for Evidence asked about the effectiveness of the Competition Commission's remedies aimed at improving prices for home credit customers and whether more needed to be done.

Fig 10 – Responses on Home Collected Credit



Responses

6.23 Respondents expressed doubts that the Competition Commission's remedies had had much impact in terms of helping consumers to get a better deal from providers of home credit loans. In particular, it was asserted that the main player in the market had consolidated its position.

6.24 Some respondents tended to link the issue with the need for an interest rate cap on forms of high cost credit, including home credit loans, while others referred to the need for more far-reaching social policy measures aimed at increasing access to affordable credit for disadvantaged consumers. This would involve continuing investment in social lenders, such as credit unions and Community Development Finance Institutions, expanding consumer financial education as well as the continuation of the Growth Fund.

6.25 Several respondents pointed out that the remedies imposed by the Competition Commission only came into effect from late 2007. It was therefore premature for an assessment to be made of the effectiveness of these remedies given the relatively short period of time they had been in force.

6.26 It was also noted that the economic situation has changed quite significantly since the remedies were implemented and that any consideration of their effectiveness would need to bear this in mind, given the large contraction of the supply of credit in the UK. The consensus of those respondents against additional action was that competition was holding up well given the difficult economic circumstances; the supply of credit has been maintained; and while some costs to the consumer had increased, this was due to increases in the costs of lenders obtaining funds from the finance markets and that returns and profitability were down as a result.

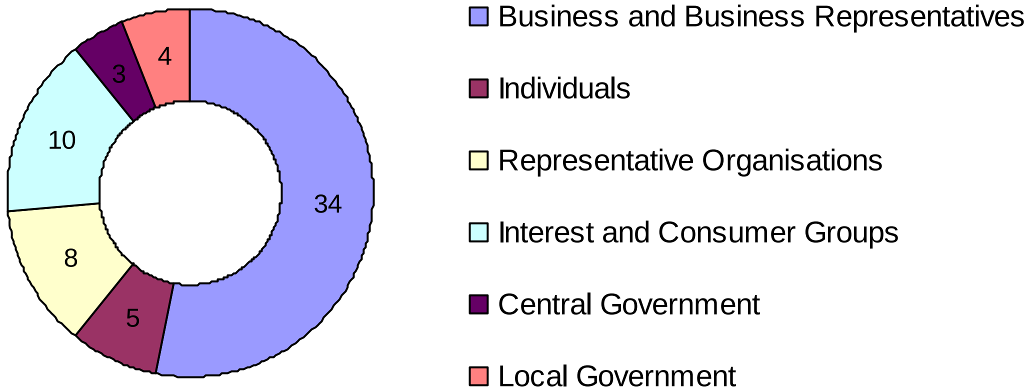
Advertising

Introduction

6.27 Current regulations on advertising for credit products focus on information which must be provided in credit advertisements – particularly about the cost of credit. However, these rules do not address other "softer" issues around the way in which credit is advertised – for example the extent to which credit is sometimes portrayed as promoting well-being or in a way which makes light of the commitment taken on by borrowers. In contrast, for other financial services the Financial Services Authority (FSA) proactively looks at the extent to which advertising and other forms of promotion are clear, accurate and balanced. The Call for Evidence asked:

Q1 – Should the Government extend regulations on advertising for credit products beyond the cost of credit?
Q2 – Should consumer credit advertising rules be aligned with those which the FSA applies to secured credit?

Fig 11 – Responses on Advertising



Responses

6.28 A key argument in favour of extending regulation was that credit was being advertised as an easy option, in a way that made light of the implications or portrayed credit as promoting wellbeing or as a means of deferring debt. There were concerns that the process to complain about advertisements was unwieldy and it was not clear how rulings impacted across the industry. Some respondents wanted to see advertisements include a 'total cost of credit' amount rather than an APR to enable better comparison.

6.29 Arguments in favour of aligning regulation included the fact that, as both secured and unsecured loans could potentially result in repossession, the rules should be the same. Some respondents pointed to the difference in risk between secured and unsecured lending, commenting that there was a need for greater caution in respect of long-term lending where a person's house might be at risk.

6.30 Most of the respondents to the two questions were not in favour of extending the regulations or aligning advertising rules for unsecured credit to those that the FSA applies to secured credit. Amongst the key arguments against extending regulations were that the enforcement authorities already had sufficient powers to take action if necessary, and that there was insufficient evidence of consumer detriment and widespread public concern to justify further regulation. Other arguments were that additional regulation could suppress competition and that an over-emphasis on giving consumers warnings could dilute the value of the warning rather than lead to better consumer decisions.

6.31 A key argument against aligning rules for secured and unsecured credit was that it was reasonable to have different regulatory regimes because of the differences in the size of the loan and the risk: with unsecured lending the risk was with the lender whereas with secured lending the borrower was placing their home or other security at risk. Other arguments were that there was no evidence that the differences in regulation were causing consumer detriment and that aligning the two systems would require a large regulatory upheaval which would be an unnecessary burden on business.

6.32 Respondents were also of the opinion that the Government should wait to assess the impact of recent changes as a result of regulations implementing the CCD before making any new rules on advertising.

6.33 It was highlighted that regulators in this market liaise regularly to ensure a consistent approach and a new code had recently been introduced covering digital media. Advertising Codes already contained an overarching social responsibility rule and regulators worked closely to ensure that broadcast advertising complied with the requirements.

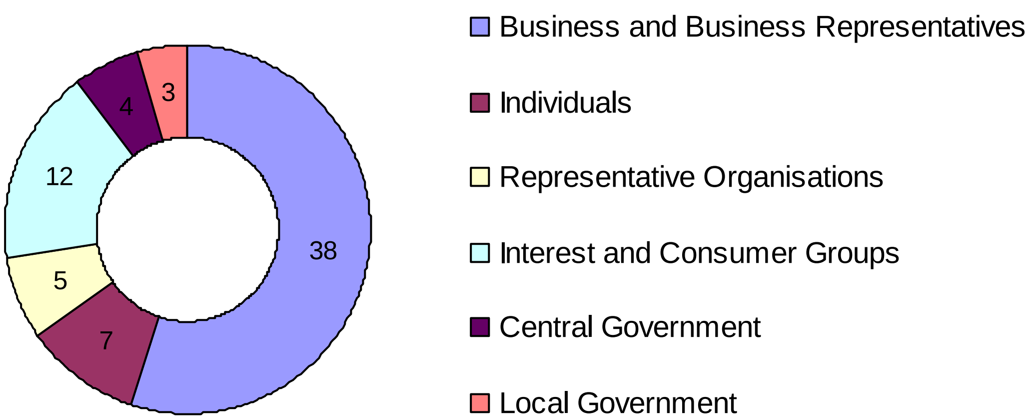
Data Sharing and Credit Scoring

Introduction

6.34 The industry and cross-Whitehall data sharing group, set up by BIS in early 2010, identified that there may be benefit for consumers in improving data sharing and for all in understanding better how existing government and private sector data is being used to encourage responsible lending. The Call for Evidence asked:

Q5 - Is there a need for greater sharing of data between the consumer credit industry and other bodies, including utility companies, local authorities and HMRC?
Q6 - It has been suggested that there needs to be greater transparency around credit scoring and the impact of credit scores on charges. Do you agree?

Fig 12 – Responses on Data Sharing and Credit Scoring



Responses

6.35 Respondents in favour of data sharing believed that it would lead to more responsible lending. Some respondents also believed that there were potential benefits for consumers in terms of financial inclusion objectives.

6.36 Respondents also highlighted the difficulties of consumers who had a ‘thin credit rating’. Consumers who had not previously borrowed money, but would have no financial difficulty in maintaining a repayment commitment, were often rejected on the grounds of an insufficient credit report. By opening up credit reference sources to include utilities and telecoms, such consumers could build an alternative credit report and enjoy easier access to credit.

6.37 On credit scoring respondents thought that better understanding, education and transparency would benefit consumers. Respondents felt that greater transparency would enable consumers to better understand why they had been rejected for a loan and what they could do to improve their credit score. Some respondents felt that consumers had a poor understanding of quotation searches and that not enough use was being made of these. Some respondents raised the issue that when declining consumers for credit, providers referred consumers to their CRA report, despite the fact that the CRA contained no negative information and/or the CRA rating was only a very small part of the assessment. Increasing transparency would give consumers a chance to amend incorrect information held on a credit file and enable consumers to better understand how a credit footprint worked.

6.38 Some of those responding were against the proposal as they thought it would ultimately lead to increased costs to consumers as well as reduced access to credit (for example due to missing a payment on a utility bill). Some respondents felt that greater levels of data sharing might open up the possibility of utility companies seeking to segment their market and charge higher rates to people with a poorer credit score. There were also clear concerns with ensuring that data was accurate and kept up to date as well as the risks associated with mistaken identity. Some respondents felt that a consumer's situation may change rapidly, and without warning, meaning that any data held would be quickly out of date. There were also concerns about privacy issues including data held by government departments and utility companies.

6.39 On credit scoring many of those responding pointed out that there was already a large amount of information that consumers could access. Respondents highlighted the OFT's Guide to Credit Scoring, which was available to consumers and explained the credit scoring process and general credit scoring information.

6.40 Respondents felt that while greater information was important there was a risk that consumers could try and manipulate their credit scores. The main concern was that greater transparency would lead to increased fraud as a better understanding of how lenders assess price for risk would enable some to 'game' the system and fraudulently apply for credit.

6.41 Other respondents said that as each lender had a different credit scoring process it would not be possible to make the process more transparent without divulging credit scoring models. Credit models were the intellectual property of the lenders, so in a competitive market, full disclosure of the lenders' underwriting models would result in loss of valuable intellectual property

6.42 Some respondents felt that there was a risk that greater transparency would move lenders towards a similar model, which would make it more difficult for 'high-risk' borrowers to access credit. Different credit scoring models had a benefit in that a consumer who had been declined credit from one lender might still be eligible for credit from another lender.

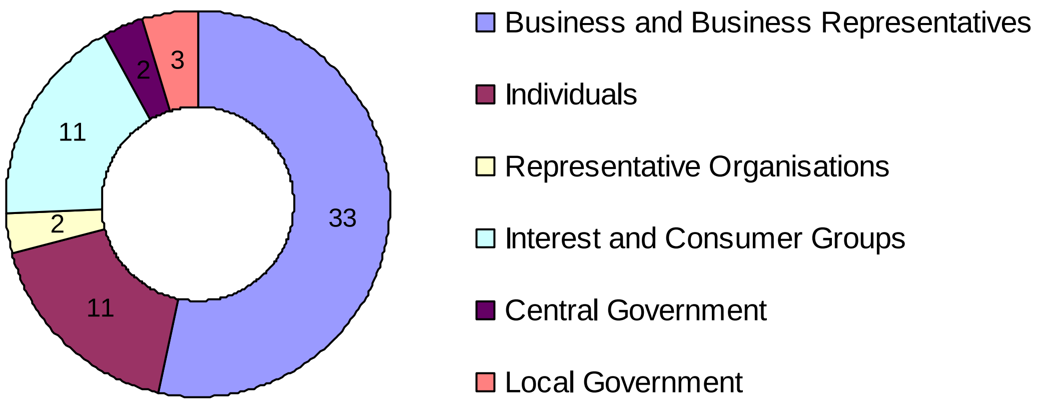
Better Regulation

Introduction

6.43 The Call for Evidence asked for views on a range of issues concerning current legislative requirements and matters affecting consumers who become indebted (Q7 and Annex A).

6.44 Responses from business or organisations representing business made up just over half of the responses received, with the majority of the remainder coming from consumer groups or from individual consumers. Whilst responses from business indicated that a degree of reform to the existing consumer credit regime was desirable, some industry respondents held the view that the various recent amendments to the consumer credit regime (including the CCD, OFT guidance and voluntary agreements) should be allowed to bed down before further changes are introduced.

Fig 13 – Responses on Better Regulation



6.45 Responses from industry tended to focus on the proposals set out under the heading “decision to borrow”, which involved specific refinements to the legislation, while the ones from consumers mainly focused on what improvements on behalf of consumers could be made “when things go wrong”. A number of respondents also said that it was hard to comment in detail on the list of issues set out in the consultation without further explanation of the thinking behind some of the proposals. A summary of the responses is attached at Annex B.

Debt and the Courts

Introduction

6.46 Questions 12 and 13 in the Call for Evidence asked about the role of the courts in the debt recovery process and question 14 asked about the impacts of a threshold on charging orders and orders for sale. The Call for Evidence asked:

Question 12: What role should the court play in the debt recovery process? Should it be restricted to genuine points of law and disputes between the parties?

Question 13: Are court based enforcement mechanisms fit for purpose? If not how would you like to see them improved or added to?
Question 14: What impact would a £25,000 threshold have on your ability to enforce unpaid debts by means of 1) charging orders and 2) orders for sale? What alternative action might you take?

Fig 14 – Responses on the Role of the Courts and Court Based Mechanisms

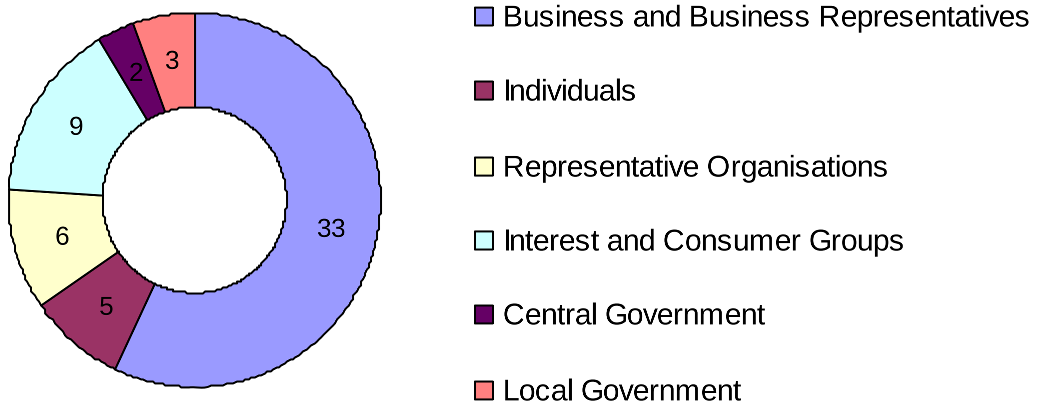
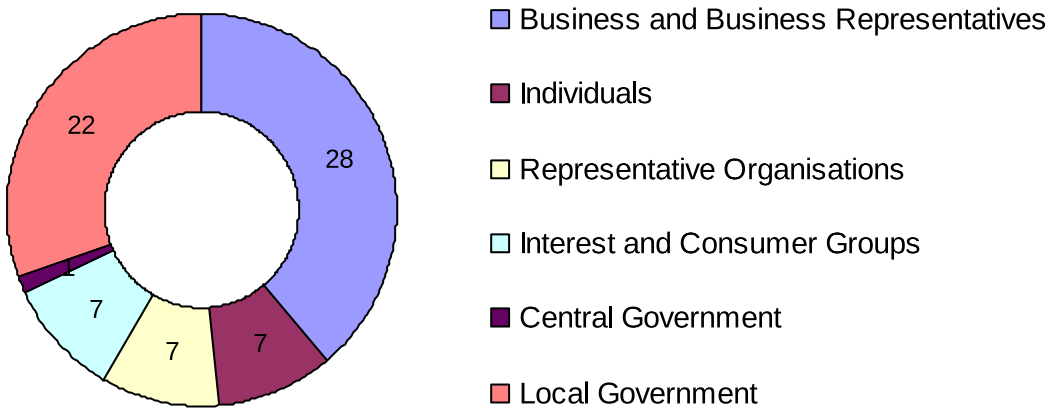


Fig 15 – Responses on Charging Orders and Orders for Sale



Responses

6.47 Many of those who responded to question 12 felt that it was essential that the courts should continue to play a role in the debt recovery process, although some of the respondents felt that their role should be limited to genuine points of law and disputes, with the majority expressing the view that the courts must be seen as a viable option for enforcement in relation to debtors who simply fail to engage in the process. Others felt that without the courts having a role it was difficult to see what alternative mechanisms could be put in place to enforce debts against those who simply refused to pay. Others felt that the courts played a beneficial role when there had been a communication breakdown between the creditor and the lender. Other respondents made the point that without having the confidence of being able to resort to court action lenders might reduce access to available credit and it would send the wrong signal to borrowers that the consequences or the magnitude of non-payment are not serious.

6.48 The general view amongst respondents was that the courts were fit for purpose and provided a safeguard for debtors, although some expressed concern at the increasing use of High Court enforcement for relatively small non-consumer debt which was considered to be inappropriate, expensive and likely to increase an individual's debt.

6.49 Some respondents felt that the court system was already overloaded and that dealing with debtors had become a largely automated process. Others were of the opinion that the largely paper-based court practices had resulted in poor practice. Many felt that the court should only be used as a last resort in the debt recovery process after all other efforts to engage with the debtor had been exhausted. Other respondents expressed concern that large parts of the debt recovery process required no court involvement and the involvement of courts in bankruptcy proceedings had had the effect of deterring people from entering into that process even if it was the best option available to them.

6.50 There was a view amongst some respondents that processes could be improved. Many of those who responded felt that individual mechanisms were antiquated and balanced too much in favour of the debtor. There was a widely held view that the enforcement mechanisms were only effective if the debtor had co-operated with the court and enforcement could be targeted at a known asset or source of income. Views of a number of financial organisations held that excessive consumer protection legislation had undermined existing consequences or enforcement remedies available to a creditor.

6.51 Other concerns expressed were that the processes were very expensive and ultimately ineffective for the "won't pay" debtor. Some of the respondents felt that existing mechanisms could be reduced, simplified and improved to deal with the 'won't pay' debtors.

6.52 Those respondents who were against the introduction of a £25,000 threshold in proceedings relating to charging orders and orders for sale felt that the imposition of such thresholds would severely restrict local authorities' powers to carry out enforced sale procedures under the Law of Property Act 1925 and, likewise, Council Tax enforced sale procedures.

6.53 Other respondents were against the introduction of a threshold as they felt that the use of charging orders remained a legitimate tool available to responsible creditors pursuing enforcement of amounts owed to them and it therefore should not be restricted. There was also a view that a £25,000 threshold would have little effect given the rarity of order for sale applications by responsible charging order creditors. Many of the respondents felt that the current procedures were effectively controlled and supervised by the courts through their discretionary powers which ensured a balanced approach between the competing interests of all parties involved.

6.54 The responses to questions 12 and 13 largely support enforcement processes being in the court where rights of debtors are safeguarded and the authority of the court process is retained. However, the majority of views held that existing processes were not up to the job. They needed to be reduced, simplified, and made cheaper. The enforcement provisions under the as yet unimplemented Part 4 of the Tribunals, Courts and Enforcement Act 2007 (TCE Act) were widely supported as offering creditors new avenues to obtain up to date and relevant information about the debtor's employment and / or assets and so facilitating effective enforcement against 'won't pay' debtors.

6.55 In light of the responses to question 14 and the Coalition commitment on orders for sale, the Government decided to consult further on an appropriate threshold for order for sale proceedings arising under regulated CCA agreements. Such proposals were set out in the MOJ consultation document on Reforming Civil Justice in England & Wales[7] which was published on 29 March 2011. The consultation also explored fundamental changes to procedures and outlined a range of proposals aimed improving the effectiveness of the court enforcement process including proposals to implement Part 4 of the TCE Act 2007. That consultation closed on 30 June and the Government response is due in the autumn.

[7] http://www.justice.gov.uk/consultations/consultation-cp6-2011.htm

7. Annexes

Annex A – Questions from the Call for Evidence

Q1. Should the Government extend regulations on advertising for credit products beyond the cost of credit?	Q12. What role should the court play in the debt recovery process? Should it be restricted to genuine points of law and disputes between the parties?
Q2. Should consumer credit advertising rules be aligned with those which the FSA applies to secured credit?	Q13. Are court-based enforcement mechanisms fit for purpose? If not how would you like to see them improved or added to?
Q3. What would be the impact of a 7-day cooling off period for store cards on (a) consumer behaviour and (b) lenders?	Q14. What impact would a £25,000 threshold have on your ability to enforce unpaid debts by means of 1) charging orders and 2) orders for sale? What alternative action might you take?
Q4. We would welcome your in views on the OFT recommendations from the review of high cost credit	Q15. How can debtors be encouraged to seek early support to help manage their debt problems?
Q5. Is there a need for greater sharing of data between the consumer credit industry and other bodies, including utility companies, local authorities and HMRC?	Q16. Do the current debt relief options strike the right balance between the needs of the debtor and the rights of creditors?
Q6. It has also been suggested that there needs to be greater transparency around credit scoring and the impact of credit scores on charges. Do you agree?	Q17. What problems are encountered with the current range of debt solutions and how could they be improved to ensure all debtors have an option and that the choices are clear?
Q7. Which of the stakeholder proposals at Annex A do you consider would bring benefits to industry or consumers and what would these be? Please provide evidence in support of your view.	Q18. Is there sufficient flexibility within the current range of debt solutions to allow for debtors changing circumstances?
Q8. Do you believe that the current voluntary, market-driven initiatives to address concerns about unarranged overdraft charges are delivering, or will deliver, sufficient improvements for consumers? If not, what would the wider implications of limiting bank charges be? Please provide evidence in support of your views.	Q19. Do the current options allow and encourage those who are in a position to repay their debts to do so? If not, why not, and how might any incentives be improved?
Q9. Should interest rates on credit and store cards be subject to a cap? If so, should this apply to all interest rates or only those which apply to existing borrowing?	Q20. Do the current options allow a person to deal effectively with a temporary income 'shock' and if not, what is needed?
Q10. Are there any alternative measures which would reduce the scope for consumers to be exposed to higher interest rates on credit and store cards?	Q21. Is some form of moratorium on creditor action required to a) allow a short time period for a debtor to seek and act on advice from a qualified adviser and b) allow a more extended period for a debtor suffering from a temporary difficulty to recover and start making repayments once more. If so, how might such an arrangement work, and what safeguards are required to ensure that creditor rights are protected?

Q11. How effective have the Competition Commission's remedies been at improving prices for home credit customers? Is further action needed?	Q22. How does a person find out where to go for debt advice and assistance? What are the advantages and disadvantages of each method?
Q23. How does a person know that he/she has been given the ‘right’ advice?	Q28. Should any changes be made to investigation and enforcement action in relation to debtors entering insolvency procedures?
Q24. What evidence do you have to suggest that debtors end up in the ‘wrong’ solution and what is the scale and impact –for the debtor, the creditors, and the economy?	Q29. What outcomes should such investigations be looking to achieve – for example, should they just relate to restrictions on future conduct or should they also impact on a debtor’s discharge from his/her liabilities?
Q25. Is it clear in all circumstances what the ‘right’ solution should be?	Q30. Are the practical effects of entering the different debt remedies satisfactory e.g. future access to financial services? Should this be influenced by the outcome of any investigation/enforcement?
Q26. How often do debtors move from one remedy to another and could the costs be reduced in any way?	Q31. Is there a role for a “gatekeeper” to provide a common entry point to all formal insolvency procedures? If so, what would be the benefits and costs, who would perform such a function and how would the system operate?
Q27. Should there be more consistency on how a debtor’s income, assets and expenditure are calculated and treated in different procedures?	

Annex B – Better Regulation Responses

Set out below is a short analysis of the main points made by respondents about each of the issues.

Decision to Borrow

Replace any remaining areas of automatic unenforceability of credit agreements with unenforceability without a court order or another appropriate penalty
Several respondents were in favour of the proposal. Many referred to the activities of claims management companies (CMCs) that exploited the automatic unenforceability provisions of credit agreements. They argued that it was unjust to lenders and to consumers who behaved responsibly but who ultimately had to pay more for their credit as a result of lenders building non-payment into their business models. Consumers who had to pay fees upfront, even when claims were unsuccessful, also suffered detriment. Respondents argued that closing the automatic unenforceability "loophole" would remove the incentive for CMC activity and would stop consumers having debt written off because of minor technical breaches that caused no detriment. They also maintained that the power of a court to review cases and order enforceability ensured that consumers' interests were properly safeguarded.

In contrast, other respondents were against the proposal, arguing that lenders who had failed to provide the most essential and basic information in pre-April 2007 credit agreements should not be relieved, retrospectively, from the sanction for this failure. They also maintained that consumers should be able to obtain remedy easily without the need for protracted court action. One respondent accepted that the actions of CMCs had been detrimental but argued that the remedy should be more effective regulation of CMCs, rather than changes to consumer credit legislation. It was also argued that this issue was properly considered when the CCA 2006 was passed and an appropriate cut-off date for the unenforceability provisions was established then; there was no compelling evidence for changing that decision.

Rationalise the requirements around signing of agreements so that more agreements can be concluded on line
Several respondents were in favour of the proposal, arguing that the measure would benefit the industry and consumers through increased convenience and efficiency. They pointed out that the current legislative requirements were restrictive, lagged behind technological developments and caused significant compliance uncertainty. They also highlighted the need for clarity about what was required to capture legally valid electronic signatures, in particular to have a clear indication of the consumer's acceptance of the agreement in order to ensure that it was not unenforceable. Some respondents also called for legislation to provide for credit agreements to be concluded by telephone.

Some respondents supported the proposal for rationalisation in principle, provided that consumer protection was maintained. Other respondents argued against the proposal on the grounds that the process for taking out credit needed to be slowed down and to involve more affordability checks, arguing that consumers often did not read on-line terms and that snap decisions based on lack of information led to an increased risk of default. One respondent suggested a statutory code of practice under the Electronic Communications Act that set out minimum standards for a valid electronic signature.

Rationalise/repeal section 18 of the CCA setting out the requirements which apply to multiple agreements
Most respondents agreed that the current requirements concerning multiple agreements were unsatisfactory, but there were mixed views as to whether section 18 should be repealed altogether or merely simplified. Some respondents argued in favour of repeal on the basis that section 18 was in principle an avoidance measure that was no longer needed following the removal of the financial limit concerning credit agreements above £25,000. The arguments in favour of rationalisation were based around the need for certainty as to which parts of the Act applied to agreements where different elements of the agreement contain different terms. Some changes had been made following the amendment of the Consumer Credit Agreements Regulations in 2005, but a more wholesale review was needed to clear up all the uncertainties.

Align all provisions concerning the cancellation of agreements with those which apply to the new right of withdrawal introduced by the CCD
Most respondents argued that there should be a single set of rules that applied to all cancellable agreements under the legislation. This would be of benefit to both lenders and consumers. However, one respondent disagreed, arguing that to make such a change at this stage would involve the burden of making changes to some types of agreement with little actual benefit to the consumers themselves.

Repeal or rationalise the CCA provisions which apply to modifying agreements
Some respondents expressed concern that relaxing the rules concerning modifying agreements would risk a loss of consumer protection as consumers in difficulty needed to know what they were agreeing to. In contrast, other respondents argued that the complexities of the existing requirements were a disincentive to entering into such an agreement in the first place. One respondent thought that any refinements to the current regime should probably be limited to revolving credit only. Another respondent pointed out that the rules had already been simplified following CCD implementation: the creditor was only required to give an indication of the changes that had arisen from a modification plus a statement that the other information in the original agreement remained unchanged.

Rationalise the requirement to provide statements for people who have moved house or entered into an IVA
Almost all of the responses were in favour of the proposal, although one respondent stressed that consumers needed to be adequately protected against any detriment arising from the proposal. It was generally agreed that there was no benefit to borrowers who had “gone away” and left no forwarding address. Such cases led to unnecessary costs for lenders, the risk of fraud and annoyance to unintended recipients. There was also broad agreement that sending statements was of no benefit to borrowers who had agreed an IVA. It might even be detrimental as different amounts could show on different statements due to time lags. In addition, borrowers might feel that they were being harassed for payment. A solution requiring limited financial information would reduce the risk of fraud but not the cost to lenders.

Require consumers to show genuine disadvantage before a breach of the CCA can make an agreement unenforceable

Many responses to this question referred to the question on automatic unenforceability of credit agreements. There was some acknowledgement of a trend over recent years to use technical arguments concerning the documenting of agreements as a means of avoiding the repayment of a legitimate debt. One respondent believed that the presumption of unenforceability encouraged this behaviour among some less scrupulous consumers and argued that all agreements should be presumed enforceable until or unless a court held that there had been a breach that caused the consumer to suffer detriment, in which case the court could make an order enforcing the agreement on different terms or refusing to allow its enforcement. Other respondents argued that it was right that the onus should be on the creditor to ensure their agreements were legally compliant in the first place.

Review the need for sections 99 and 100 of the CCA concerning Voluntary Terminations review the provisions of section 185 CCA 1974 concerning information to be provided to joint account holders

Several respondents argued that the section 99 and 100 CCA protections were no longer necessary given more recent provisions such as right of withdrawal and early repayment that enabled consumers to discharge their obligations under an agreement. The provisions on voluntary termination were not in the main used by consumers in financial distress and the costs incurred by lenders because of consumers exercising their right to terminate voluntarily was increasing and had the effect of increasing the costs of credit for consumers generally.

Other respondents took the opposite view, arguing that sections 99 and 100 served as an important consumer protection and should be retained. It was important to do so because the position of a consumer entering into a Hire Purchase agreement was different from the purchase of goods by, for example a credit card. In the former situation, the lender retained all rights of ownership which created an imbalance between the parties. Furthermore, the lender had a degree of control over when the required 50% point was reached in that it was linked to the total amount payable under the agreement. It was open to the lender to adjust the amount of any deposit or the periodic repayments.

Joint account holders

Several respondents believed there was scope for reform as the way in which banking was now conducted had changed since these provisions were designed. They argued that it should be possible for consumers in this position to be given the freedom to decide how they wish to receive information. Some consumers might wish all information concerning a joint account to be addressed to them personally, but this should not be the default position. Other respondents were more cautious about reform in this area, particularly given the possibility that the joint debtors could be a couple who later separate. One respondent thought it might be possible to extend the circumstances where one of the joint debtors could opt out of receiving certain kinds of information about the agreement, but felt that this should not be applied to arrears or default notices or notices of default sums.

What Happens When Things Go Wrong

Requirement for banks to identify and act quickly on snowballing penalty charges/unmanageable debt

A number of respondents saw no immediate need for action as banks were already compelled via OFT Irresponsible lending guidance and the Lending Code to act when it was obvious that a consumer was in difficulty (eg through the incurrence of repeated penalty charges). Following this, the banks and OFT were now working together to help customers avoid penalty charges. These developments needed time to develop and bed in. It was also pointed out that any such action could only be in respect of the consumer’s account with the bank in question and not in respect of the debtor's overall financial position. Other respondents believed more could be done in this area, eg the Lending Code should be expanded to require more information on overdraft rates in current account statements and on costs incurred during the statement period.

Provision of emergency borrowing facilities with limited duration and capped interest rates
Several respondents pointed out that emergency borrowing facilities already existed in the form of interest-free Social Fund Crisis loans and emergency overdraft facilities which banks would usually offer to individual customers. Some respondents suggested what else might be done to help consumers in need of such help, eg banks could provide a small buffer zone in a customer’s overdraft in which they had a certain number of days to clear the debt before they incurred penalty charges. Another suggestion was that banks could provide a short term lending facility for their customers who had a regular income whereby the money loaned would be repaid in full at the next payday. This would help avoid such customers having to resort to higher cost lenders. Another respondent made the wider point that providing access to simple loan and banking products via Post Office banking services and credit unions would play a vital role in helping the financially excluded to obtain better access to mainstream financial services, and to help them move away from high cost credit products.

Greater public monitoring and review of licensees
Several responses questioned what further powers could be given in this area since the CCA 2006 reforms had already given the OFT enhanced powers to monitor and supervise credit licensees, and these powers had already been exercised a number of times. Other respondents tended to believe that more that could be done in terms of warning the public that a company was under investigation as at present consumers continued to borrow money from companies who might be acting illegally. One respondent suggested amending the current restrictions in the Enterprise Act which prevented the OFT from identifying businesses that were under investigation, although another respondent pointed out that any actions taken here must have regard to the Human Rights Act and the right to a fair hearing and the duty of confidentiality.

Enhanced power to suspend a consumer credit licence
Several respondents believed that the CCA already contained sufficient powers to enable the suspension of a licence. There was some acknowledgement that the OFT might not be able to act as quickly as would sometimes be ideal, but the consequences of a suspension – e.g. the cessation of business – was very severe and it was right that due process be followed. The alternative view was that the current system did contain critical areas of weakness. The current process could take over 12 months during which time considerable consumer detriment could be caused by firms engaging in activities that would ultimately lead to the loss of their licence. Where it was believed that this was the case or where a licence would not have been granted in the first place (eg when previous criminal convictions came to light), it should be possible to allow for the immediate suspension of the licence.

Establish a "warning order" for credit licensing along the lines of estate agents

There was little support for the idea. Several respondents believed that the OFT already had a wide range of remedies available to it, including a ‘minded to revoke’ notice that was equivalent to the warning order under the Estate Agents Act 1979. It was also pointed out that as the Estate Agents regime works by means of negative consent, the two systems were rather different. It was not necessary for the OFT to be given a pre-emptive power as far as consumer credit businesses were concerned because the OFT could already take action to remove a licence without the need for a prior notice. Other respondents felt that it might be useful for the OFT to have such a power in cases where it had already imposed behavioural remedies and where there were questions about compliance with those remedies. Such matters might not be deemed automatic grounds for the business to be considered unfit to hold a licence, but if a warning order was issued and the non-compliance continued, such an offence could lead to an automatic revocation of the licence.

Enhanced access to criminal records
There was general agreement that it would be beneficial for the OFT to have enhanced access to criminal records in relation to the licensing applications. The regulator needed access to any information relating to criminal activity that might suggest the applicant was not fit to hold a licence. However, this enhanced right of access would also need to be balanced by the rights of individual applicant s for privacy in relation to records concerning unrelated crimes.

Accelerated appeals process
There was qualified support for this proposal among most respondents provided that basic principles on the right to a fair hearing were maintained. One respondent commented that the licensing revocation procedure could drag on, during which time the licensee could continue to operate to the potential detriment of consumers. However, one respondent was less supportive, noting that under the current system the First Tier Tribunal set out the timescale for the court proceedings, as would be the case with other kinds of court proceedings, and this system provided for the right balance to be struck in respect of the parties being able to put their case properly.

Provide for restorative justice
The majority of respondents were in principle supportive of the concept, although some respondents said they would need more information about how this would work in practice. One respondent noted that the FSA already had the power to order consumer redress in situations where lenders had acted in a way that was detrimental to consumers, although the OFT did not have powers to order compensation to be paid to consumers in similar circumstances. Other respondents were not very supportive of this proposal. In particular it was felt that the long-term impact on borrowers in general would be negative because it would act as a deterrent towards the granting of credit, or would make the cost of credit more expensive. It was also pointed out that consumers already had a dispute resolution mechanism available in the form of FOS.

Limit ability of creditors to add excessive interest and charges to bad debt
Several respondents made the point that the OFT Irresponsible Lending Guidance stated that lenders should consider forbearance for borrowers in difficulty. The Lending Code also had similar provisions. Furthermore, careful consideration would need to be given to what constituted excessive interest and bad debt, and there was a risk that suspending such charges would be a disincentive to responsible borrowing. Another respondent made

the point that there was already a prohibition in section 93 CCA on increasing interest on defaults. Charges on defaults already had to reflect a genuine pre-estimate of the loss incurred by the lender. Other respondents argued that work should be undertaken to examine whether there should be limits on the amount of default interest/charges that could be charged when a consumer was in difficulty - and not just in relation to bank charges – and whether creditors should be more proactive in identifying consumers in financial difficulties and responding sympathetically.

Ban on orders for sale except in exceptional circumstances and for all unsecured debts below £25,000
See response to question 14.

Minimum debt thresholds for charging orders (at least £25,000)
See response to question 14.

Regulate private bailiffs effectively
One respondent noted that consumer credit debt judgments were not enforced by private bailiffs but via County Court bailiffs. Another respondent hoped that the Call for Evidence would build on the programme of bailiff reform as started by the Tribunal, Courts and Enforcement Act 2007. However, there seemed to have been little progress on an independent redress scheme or a single regulatory platform for bailiff regulation or on the reform of fees charged by the sector. With regard to those debts that are pursued on behalf of finance companies, there was general agreement that more could be done. A range of examples of bad practice were cited, including threatening behaviour; forced entry; and a reluctance to discuss repayment options. A number of respondents suggested that an industry wide code of practice needed to be put in place, alongside a complaint procedure that was fully accessible to all types of consumers.

Ban repossession of goods secured by sale
This issue was the subject of a separate Government consultation in December 2009 and there were few substantive responses received as part of this consultation. Some responses indicated that there were still consumer protection concerns in respect of bill of sale lending. There were calls for the bill of sale legislation to be reformed to address, in particular, difficulties experienced by consumers who defaulted on the loan. It was also noted that some bill of sale agreements appeared to be structured to make it more likely that the consumer would default, eg through the requirement for a balloon payment towards the end of the agreement, which the consumer might have difficulty in meeting.

Rationalise role of FOS
Several respondents felt that FOS was doing a good job in protecting the role of the consumer. There was praise for its independent and impartial role as well as the innovative work undertaken to ensure its service was widely accessible to consumers. Its continuation was essential to ensure consumers retained confidence in the financial services sector. There were calls for more to be done on transparency of information, including enhancing the current complaint tables to include information such as a breakdown of complaints via brand, market share, total levels of redress as well as the routine publication of all FOS decisions and the regular publication of ‘emerging issues’ identified as a result of incoming complaint cases. One respondent noted the perception that FOS was paid for by banks and therefore on the side of the banks. Its sanctions could seem weak compared to the profit that could have been made from a miss-sold loan.

In contrast, other respondents expressed concern that the fee structure in place provided too much incentive for consumers, or more particularly for CMCs, to put in spurious claims. This was a particular problem for lower value credit because of the non-refundable £500 fee that had to be paid by the lender to the FOS in respect of each case referred to it, regardless of its merit. There were calls for FOS to do more to manage more effectively those CMCs who were acting inappropriately, either directly through the development of rules around how they will handle CMCs or by linking in to work being undertaken by the MOJ. Changes were needed to the charging structure in order to take account of inappropriate claims submitted by CMCs or where the lender had already offered appropriate redress to the consumer. There were also concerns expressed about the nature of FOS rulings, which some felt were interpreting the law much too broadly.

Tighten credit licensing requirements to set a higher standard for debt management providers
See response to question 15-31

Annex C – List of Respondents

Accenture	British Bankers' Association	Consumer Finance Association	Empty Homes Network
Accountant in Bankruptcy	British Cheque and Credit Association	Consumer Financial Education Body	Equifax Ltd
Advertising Standards Authority	British Retail Consortium	Consumer Focus	Experian
Advice Network & Training Partnership	Callcredit	Coventry Citizens Advice Service	Fairpoint Group
Advice NI	Canterbury Official Receivers Office	Credit Action	Finance and Leasing Association
Alex Cunningham MP	Capital One	David Bown	FSA
Alex Tanner	Capitalise Debt Advice Partnership	David Crausby MP	Fiona O'Donnell MP
Alison Brown	CashEuroNetUK	David Ireland	Freddy Crabbe
Amber Valley Borough Council	CBI	David Jones	Geoff Hogbin
Anas Sarwar MP	Centre for Responsible Credit	Debt Managers Standards Association	George Wilkinson Associates
Andy Burkett	Chartered Accountants Ireland	Debt Plan Direct	Gloucester Official Receivers
Andy Crow	Chris McBride	Debt Wizard	Grant Thornton UK
Arun District Council	Christians Against Poverty	DCLG	Harriet Painting
ASA Associates	Christopher Tunnah	Derby City Council	Hazel Blears MP
Association of British Credit Unions Ltd	Church Action on Poverty	Devon Trading Standards	Home Retail Group plc
Association of British Insurers	Citizens Advice Scotland	Dollar Financial	Horsham District Council
Association of Business Recovery Professionals	Citizens Advice Service	Doorways	HSBC Bank Plc
Barclaycard	Civil Court Users Association	Doris Piper	Hugh Bailey MP
Barnardo's	Claire Warren	Douglas Reid	Ian Mears MP
Birmingham Trading Standards	Clare Billing	Dr George Deutsch	Information Commissioner's Office
Bob Egerton	Cllr Hazel Thorpe	Dr. Ahmed Abbas	Insolvency Practices Council
Bob Leitch	Confused.com	Elaine Nicholson	Insolvency Practitioners Association

Brian and Jane Hogbin	Consumer Credit Counselling Service	Empty Homes	Institute of Chartered Accountants in England and Wales
Institute of Credit Management	Michael Maley	Prof. John Macleod	TDX Group
Jane Davies	Michael Reeves	Professor Eva Lomnika	The Advertising Association
Jane O'Brien	Miles Stapleton	Provident Financial plc	The Building Societies Association
Jenny Chapman MP	Mind	Rachel Reeves MP	The Consumer Council for Northern Ireland
Jeremy Sutcliffe	Money Advice Trust	Rachel Thompson	The Direct Marketing Association (UK) Ltd
John Leech MP	Mrs S Peacham	Reading Borough Council	The Financial Inclusion Centre
John Wade	Mutual Clothing and Supply Ltd	Richard Matthews	The Royal Bank of Scotland
John Woodcock MP	Naomi Long MP	Robert Brown	UK Cards Association
Jonathan Edwards MP	Natasha Cook	Robert Flello MP	Thrive
Jules May	National Housing Federation	Ros Sobotnicki	Tim Mullen
Kevin Ward	National Pawnbrokers Association	Royal Association for Deaf people	Tom Greatrex MP
King's College London School of Law	National Union of Students	Royal Borough of Windsor & Maidenhead	Tom Tabori
Kingston University Students Union	Nationwide Building Society	Ruhoof.Nozeer	Tony Cant
Landman Economics	NEXT plc	Santander Cards	Tony Cunningham MP
Leeds City Council	Nic Dakin MP	Scottish Government	Torridge Council
Legal Beagles	Nick Lord	Sheila Gilmore MP	Tunbridge Wells Borough Council
Lending Standards Board	OFT	Sher Group	University of Cambridge
Lilian Greenwood MP	Owen Smith MP	Shopacheck	Urban Forum
Lloyds Group	Pat Glass MP	Simon Munk	Vanquis Bank
Local Government Regulation	Paul Blight	Simon Wright MP	Virgin Money
London Borough Of Bromley	Paul Murphy MP	St Albans Official Receivers Office	Which?
London Borough of Newham	Paymex Group	Stella Creasy MP	Wonga.com
Luton Council	Payplan	Steven Twigg MP	Wycombe Council
Madeleine Moon MP	Personal Finance Research Centre	Stockton Borough Council	Yorkshire and Region HMO Network
Marc Knox	Peter Rhodes	Stuart Dabner	Yvonne Fovargue MP

Mark Durkan MP	Peter Tansey	Susan Jones MP	Zacchaeus Trust
Marsha Singh MP	Plymouth Council	Swansea Council	Zero Credit Ltd
Maxine Rogers	Prof. Iain Ramsay,	Tandem Solutions	

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