

Feedback statement

Financial Ombudsman Service

Rules for the new
consumer credit jurisdiction
from 6 April 2007



December 2006

Feedback statement

Consultation on rules for the new consumer credit jurisdiction

overview

The Consumer Credit Act 2006 amended the Financial Services and Markets Act 2000 in order to allow the jurisdiction of the Financial Ombudsman Service to be extended to all consumer credit businesses holding standard licences issued by the Office of Fair Trading (OFT).

In June 2006 the Financial Ombudsman Service issued a consultation paper on the proposed rules for this new consumer credit jurisdiction (CCJ). The consultation closed in October 2006, and this feedback statement:

- o summarises the responses received to the eight questions in the consultation paper;
- o sets out the decisions which have been made; and
- o deals with some other issues identified during the consultation period.

We received 28 responses from a representative cross-section of trade associations, consumer credit businesses, consumer organisations and other stakeholders. Annex A lists those who responded, apart from those who asked for their responses to be treated as confidential.

Respondents supported the proposals in the consultation paper, particularly the central proposal that the rules for the CCJ should be as close as possible to those for our existing compulsory jurisdiction (CJ), which applies to financial services firms regulated by the Financial Services Authority (FSA).

However, views were divided on some issues, including: whether the complaint record-keeping and reporting requirements of the CJ should also apply to the CCJ; whether the Consumer Credit Act limitations on eligible complainants should apply only to the CCJ; and some aspects of the funding arrangements.

Annex B sets out the CCJ rules made by the Financial Ombudsman Service and approved by the FSA. These will come into force on 6 April 2007. They will apply to all consumer credit activities except debt administration and the provision of credit information service. The Government intends to extend the Financial Ombudsman Service's remit to these later, probably from 1 October 2008.

Since June 2006, when we issued the consultation paper, we have been working closely with the consumer credit sector and its trade bodies, as well as with other stakeholders, to explain what the new arrangements will mean in practice - and how businesses can plan in advance for the changes.

We have produced a range of leaflets and information - as well as launching a dedicated consumer credit section on our website.

We are also running a series of special workshops and events around the country - for people working in the consumer credit sector to find out more about the role and work of the ombudsman service. And we are taking part in key industry and consumer-adviser conferences and exhibitions, to introduce the ombudsman service and help promote awareness of the new arrangements.

The consultation paper is at www.financial-ombudsman.org.uk/publications/technical_notes/consumer_credit/index.html

The consumer credit section of our website is at www.financial-ombudsman.org.uk/faq/consumer_credit.html

question 1

Do you agree that the ombudsman service's compulsory jurisdiction (over FSA-regulated businesses) should be extended to include those consumer credit activities that are currently excluded – so that all complaints against FSA-regulated businesses can be handled under the compulsory jurisdiction, rather than be split between the compulsory jurisdiction and the consumer credit jurisdiction?

A large majority of stakeholders supported this proposal, citing transparency and minimising administrative burdens as the main reasons. This proposal was also consulted on by the Financial Services Authority in its Quarterly Consultation Paper Number 9 (CP06/13) in July 2006, and received unanimous support.

Accordingly, as proposed, from April 2007:

- **the CJ will cover the consumer credit activities of FSA-regulated firms, and the FSA has amended the CJ rules accordingly;**
- **the CCJ will cover the consumer credit activities of other holders of consumer credit standard licences.**

question 2

Do you agree that it will be simpler for both businesses and consumers if the rules for the new consumer credit jurisdiction (e.g. on time limits and procedure) mirror, so far as possible, the current rules for the existing compulsory jurisdiction and voluntary jurisdiction?

This proposal received near-unanimous support.

Accordingly, as proposed, the CCJ rules which have been made mirror, so far as possible, the CJ rules.

question 3

Do you agree that the limitations on eligible complainants in the Consumer Credit Act should apply only to complaints against businesses covered by the CCJ?

A majority of respondents supported this proposal. Those opposing the proposal mainly represented businesses covered by the CJ and considered that there should be a level playing field between CJ and CCJ participants. But this would involve removing the existing right of some complainants (some small businesses) to access the CJ. We do not believe that the Consumer Credit Act 2006 was intended to remove this existing right.

Accordingly, as proposed, the limitations in the Consumer Credit Act on eligible complainants have been applied only to the CCJ. Broadly, the effect is that limited companies and partnerships with more than three partners are not eligible to complain under the CCJ. They continue to be eligible to complain under the CJ if their group turnover does not exceed £1 million per year.

question 4

Do you agree that the CJ rules on recording and reporting of complaints should not be applied to businesses covered by the CCJ?

A majority of respondents agreed that the CJ rules on recording complaints should not be extended to the CCJ, on the basis that a requirement to keep records of complaints would be an unnecessary burden. But a significant minority of respondents considered that keeping records represented current best practice, so they considered it would not impose a significant burden and would also assist the OFT as regulator in its role of judging fitness to hold a licence.

Almost all respondents agreed that the CJ rules on reporting complaints should not be extended to the CCJ, on the basis that this would be a new and substantial burden of doubtful benefit. Those respondents who disagreed believed that there should be such a requirement in order to ensure a level playing field between those covered by the CJ and CCJ.

In the light of these responses, we have not applied the CJ rules on recording and reporting of complaints to the CCJ. The CJ rules on these topics are made and monitored by the FSA. Any CCJ rules on this topic would be made by the Financial Ombudsman Service, which is not a regulator and does not have the facilities to monitor compliance.

But we have strengthened the guidance on record keeping. This guidance now underlines the importance of making and retaining records, to assist the consumer credit business if a complaint is referred to the ombudsman service and also to assist the OFT as regulator in its licensing function.

question 5

Do you agree that the Financial Ombudsman Service should have the power to dispense with or modify the application of the complaint handling rules where this would be unduly burdensome or would not achieve the purpose for which they were made?

A large majority of respondents supported this proposal, although many wanted reassurance about the circumstances in which the power to dispense with or modify the application of rules would be used.

Accordingly, as proposed, we have incorporated such a power in the CCJ rules. It mirrors a power the FSA has in respect of the CJ rules. We do not anticipate using the power save in exceptional circumstances, and the CCJ rules include guidance to make this clear.

questions 6 and 7

Do you agree that the most appropriate funding arrangement would be a combination of a flat-rate five-yearly levy of around £150 per firm and a case fee of around £405 to £480, depending on the number of "free" cases offered?

Would you in theory favour two 'free' cases per business per year and a case fee of around £405 for any additional cases, or five 'free' cases per business per year and a case fee of around £480 for any additional cases?

A large majority of respondents supported the proposed fee structure, with divided views on whether it should be two or five 'free' cases per business per year. Of the minority who disagreed with the proposed fee structure, some were concerned about the possibility of paying case fees for vexatious complaints, and some said case fees should not apply to independent not-for-profit consumer advice bodies.

For the period ending 31 March 2008:

- **The Financial Ombudsman Service has set (with FSA approval) a total levy of £2,475,000. This comprises £2,400,000 for the ombudsman service's costs plus £75,000 for the OFT's collection costs. It is for the OFT to set the amount of the levy it collects from individual licensees. We understand that it is likely to set a levy in the region of £150, payable when a standard licence is taken out or renewed.**
- **The first two cases per business per year will be 'free'. Cases the Financial Ombudsman Service dismisses on the ground that they are frivolous and vexatious will also be 'free'. Further cases will attract a case fee of £400 each.**

In view of uncertainty about the number and spread of consumer credit cases, we are starting with the conservative number of two 'free' cases. We will, with the OFT, keep the funding system under regular review in the light of experience – including the possibility of increasing the number of 'free' cases per business per year.

We are sympathetic to the principle of exempting independent not-for-profit consumer advice bodies from payment of case fees, if they can be identified as such from the OFT register of consumer credit licences – though we think that such cases are likely to be very rare. We will carry out a study to look at the feasibility of this.

question 8

Do you have any information on likely numbers of complaints under the CCJ and how they will be distributed amongst businesses of different types and sizes?

A small number of firms, trade associations and consumer bodies provided information on likely numbers of complaints under the CCJ, for which we are grateful.

exempt agreements

The consultation paper was prepared on the basis that the potential scope of the CCJ included 'regulated' agreements but excluded 'exempt' agreements. Further work during the consultation period suggested that the potential scope could include 'exempt' agreements also, which is wider than we and stakeholders had thought.

We have considered whether we should extend the CCJ to cover 'exempt' agreements, but have concluded that this would not be appropriate, for several reasons:

- It would extend the CCJ beyond the scope on which we consulted and which we believe stakeholders were expecting.

- 'Regulated' agreements have to be in a specified form and are easily identifiable. Including 'exempt' agreements would make it much more difficult for businesses and consumers to understand what the CCJ covers and does not cover.
- The effect of not including 'exempt' agreements is small, confined mainly to loans of more than £25,000 to small businesses.

In line with expectations, we have not extended the CCJ to 'exempt' agreements. We have introduced some small changes to the draft rules on which we consulted in order to make this clearer.

credit reference agencies

During the consultation period we identified a drafting error in the proposed wording of rule DISP 2.4.11 R (6), which should have referred to "credit reference agency" rather than "credit information services".

We have corrected rule DISP 2.4.11 R (6) so that it refers, as intended, to credit reference agencies.

unfair relationships test

A number of respondents expressed concerns about how the Financial Ombudsman Service would be able to handle complaints where the Consumer Credit Act's new unfair relationships test is a factor.

We do not believe that this will change our normal approach to assessing consumer credit complaints, as we are required by law to decide cases on the basis of what is fair and reasonable in all the circumstances of the case – though we take into account legal principles when doing so.

proposed simplification of the rules

As previously described, the new CCJ rules mirror the CJ rules. It is proposed to examine both sets of rules with a view to simplifying and shortening them. The first stage is a proposed simplification of the rules in chapter 1 of DISP on in-house complaint-handling by businesses, to come into effect from 1 November 2007.

This is covered, as part of a larger consultation on other topics, by the FSA's consultation paper CP06/19. The explanatory text is in chapter 31 of the consultation paper. The draft simplified rules are in part 5 of annex 6 to the consultation paper.

The FSA consultation paper is at www.fsa.gov.uk/pubs/cp/cp06_19.pdf - see page 188

Annex 6 is published separately at www.fsa.gov.uk/pubs/cp/cp06_19_annex6.pdf - see page 333

The proposed changes do not alter the fundamental requirements in chapter 1 of DISP about prompt and fair investigation, adjudication and communication with consumers about complaints. The main changes relevant to the CCJ would be:

- requiring complaints to be acknowledged 'promptly', rather than within a specified period of five days;

- a broad requirement to keep complainants reasonably informed of the progress of their complaint, rather than requiring a holding reply at four weeks;
- a requirement to refer to the ultimate availability of FOS when dealing with customers at the point of sale and when acknowledging a complaint, rather than by notices in branches; and
- potential harmonisation of the provisions for one-stage and two-stage in-house complaints handling procedures.

The consultation period for these proposed changes closes on 23 February 2007. Any comments should be sent to the FSA, at the address quoted in CP06/19. We wrote on 13 November 2006 to recipients of our consultation on the CCJ rules to alert them to this later consultation.

Annex A

Respondents to the consultation paper

adviceUK
Association of Finance Brokers
Association of Mortgage Intermediaries
AVIVA
Berwin Leighton Paisner LLP
Bisnode plc
British Bankers Association
British Cheque Cashers Association
Citizens Advice
Council of Mortgage Lenders
Credit Services Association
Debt Recovery Bureau Ltd
DEMSA
Experian
Finance and Leasing Association
Friends Provident Life & Pensions Ltd
Gemstone Financial Management Ltd
Institute of Credit Management
Law Society of Scotland
Mail Order Traders Association
Money Advice Trust / National Debtline
National Association of Commercial Finance Brokers
Northern Rock
Office of Fair Trading
Personal Finance Research Centre

A further three organisations provided responses that were confidential.