

CCA REFORM

Briefing Paper

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REFORMING CONSUMER CREDIT: HMT CONSULTATION

WHAT YOU REALLY NEED TO KNOW

We have let others provide summaries of the HMT paper... What this paper does is to focus on what we think is important, not just repeat what's there for you to read already.



Where are we in the process?

We are at the start of a long process – which is likely to last for years.

HMT will need to secure Parliamentary time to bring forward primary legislation. Any new Bill and amendments to it would need to be debated through both Houses of Parliament.

Only then would there be the architecture to make the rules HMT needs to do everything it wants to – and only then can FCA realistically start a process of consultation over any new FCA Handbook rules (in CONC).

The industry should think about ways to help HMT prioritise areas of reform ahead of others to enable the reforms to move forward more quickly.



Removing unwanted EU legislation

HMT is keen to review regulation brought in by the CCD with a view to removing unwanted elements.

HMT already has the power to make these changes, including amending existing requirements to implement a UK focused regime and so it doesn't need to wait for UK primary legislation to do that.

The paper calls out the potential to remove the SECCI / Pre-Contract Information and to review advertising. Utilising EU onshoring powers could be a way to look more broadly at other aspects of CCA requirements, including agreement content, credit intermediaries and early settlement (both full and partial).



What is HMT trying to do?

HMT accepts that the Consumer Credit regulation is now outdated in approach, is too complex and fragmented. It has set 5 sensible principles against which to test its reform proposals:

- **proportionate** consumer protection vs business burden
- **aligned** with broader regulatory framework
- **forward looking** making it adaptable to future changes
- **deliverable** with adequate implementation time
- **simplifies and modernises** making it easier to explain

It wants to see CCA regulation all move to the FCA, but in a way that ensures high levels of consumer protections are maintained. HMT indicates that consumer credit may need a tailored approach to regulation – setting the path to maintain certain existing protections.



Potential to change the scope of regulation

HMT reiterates its commitment to regulate Buy Now Pay Later, but getting the information requirements right is a key consideration. This also leads to a question of alignment of regulation for similar activities (including lending below £50).

HMT also asks whether there is scope to redefine the definition of "credit". This may well be worth doing in legislation. The current definition is arguably too wide and captures activities that most people would instinctively not regard as "credit". Being more precise about what is within regulation could reduce risk for the industry and also reduce the number of firms needing to be FCA authorised.

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Reform of the regulation of hire agreements on the cards

This makes sense given that the form and content of these agreements remains in the CCA too. HMT calls out the need to potentially create a regime for certain types of hire arrangements that more closely align it to credit regulation.

There is also an opportunity to work with HMT to try to define what should be within and what should be outside regulation. There are arrangements for longer term hire which are not intended in any real way to be a substitute for credit.

There may be a case for considering what is akin to credit, what is genuine hire, and what is a subscription. We may not need a one size fits all approach here.



Better CCA documentation needed

HMT is not intending just to move existing CCA documentation requirements into the FCA regime. There is an opportunity to redesign what documentation and information a customer should get and when. HMT has called out they want reforms to facilitate financial inclusion too.

There is an indication that HMT see detailed documentation requirements as the remit of the FCA and so we would expect ultimately much less to sit in legislative requirements. However, HMT has posed the question as to whether some of the architecture associated with consumer credit lending (e.g. fixed sum vs running-account) could be rethought.

A key question will be what level of flexibility vs prescription is needed. For lenders, this may depend upon what the sanctions look like. The more draconian the sanctions, the less industry is likely to support flexibility – because flexibility in delivery brings with it less certainty of compliance.



Regulation of business lending might be reviewed

HMT mentions that the existing coverage of business lending only covered a small proportion of firms. This could be indicative that HMT is considering whether more business need protection.

Equally, against the new growth and competitiveness agenda, there may be scope to consider afresh what regulatory regime should apply to business lending, deregulating aspects of existing protections.

Industry should consider what an SME lending regime should look like. There may be scope of a review of other provisions, such as those in the CMA Order and the FOS jurisdiction coverage.



CCA Sanction might need to remain

There are indications in the consultation that HMT have yet to be persuaded that specific CCA sanctions (i.e. agreement unenforceability, disentitlement to interest, and court based powers) do not remain appropriate in some form – even in an FCA enforcement, FOS and Consumer Duty world.

It is not clear that there is strong evidence of how outdated CCA sanctions remain effective (other than to produce windfall benefits disproportionate to any harm). However, lenders should be thinking about how some of these sanctions could be made to work better in a post CCA world.

The option potentially favoured by HMT might be to provide powers to FCA to make consumer credit rules and then determine which of those, if breached, should make agreements unenforceable. There are a number of reasons why this could be a step back to former "total unenforceability" type rules and a less manageable and more risky lending environment for UK lenders.

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Environmental based lending facilitated

HMT will consider reforms that assist the Net Zero agenda. Some specific issues are called out in the paper, but there is the opportunity for lenders to consider structures that could incentivise consumer borrowing in this space. Lenders have carried risk in relation to previous similar initiatives (e.g. solar panel installations). This could be an area where a reduction in s75 rights could reduce lender risks and create more appetite for funding structures.



Possible reform of s75 liability

There is a steer that HMT considers this protection to be important and so will be retained. HMT poses the possibility of reform looking at different structures where payment processes might technically remove these rights.

This could be an opportunity to look at different payment mechanisms to seek to standardise consumer protection. There is no clear rationale for maintaining unlimited lender liability where a customer happens to pay by credit, yet providing for no protection where other forms of payment are used. There is a debate on consumer protections for Faster Payments that could be brought into this more holistic consideration. S75 could then be aligned, for example by limiting protection to the value of the goods / lending being provided.



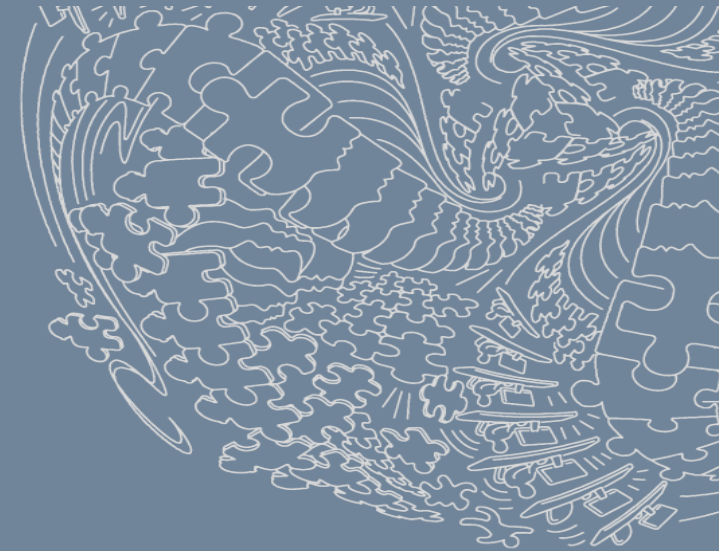
Retention of certain other rights looks likely

The consultation gives a steer that HMT is minded to see as important s56 (deemed agency), s94 (right to early settle), although HMT do note the potential for reform of how the right works, and s93 (default interest restriction).

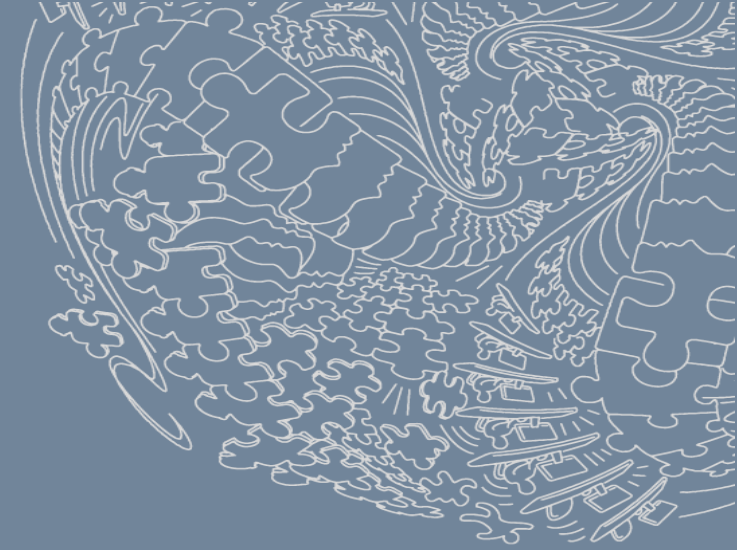
HMT are also considering whether FCA powers could be extended to enable the FCA to make rules that then could grant private rights (e.g. by providing for legal effect in legal proceedings). This would be a substantial expansion of regulatory powers and feels dangerously wide.

Areas where HMT seem to be less clear whether the rights should be retained are: (1) time orders – are they really used? and (2) Voluntary Termination rights – should they be limited to financial difficulty situations only?

HMT also raises whether unfair relationship rights should be reviewed, although the commentary suggests HMT are leaning towards their retention currently.



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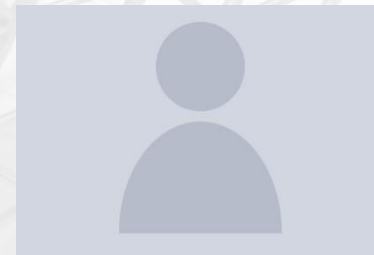


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