



ADDLESHAW GODDARD

October 2008

InCredit

This month's edition sees the OFT and MoJ warn against claims management companies, the OFT issuing new credit licence guidance, the FSA and OFT publish a guide to dually-regulated credit advertisements, the FOS proposal re publishing complaints about businesses and OFCOM fining a credit provider for silent calls.....

In this issue:

Consumer Credit

- OFT: Provision of credit information services to be licensed under new CCA requirements
- The Consumer Credit Act 2006 (Commencement No. 4 and Transitional Provisions) (Amendment) Order 2008 published on OPSI
- Consumers set to be able to take advantage of falling credit cards fees
- OFT publishes updated debt management guidance
- OFT and MoJ produce joint statement warning consumers against claims management companies
- OFT: New Credit Licence Guidance
- BERR publishes September 2008 stakeholder notice

Insurance

- Competition Commission's Revised Timetable for PPI Reports
- Britons are being misled into taking out Payment Protection Insurance (PPI) on their credit cards

Advertising

- FSA and OFT publish guide to dually-regulated credit advertisements
- ASA Adjudication
Barclays Bank plc t/a Barclaycard - I complainant

Mortgages

- FSA fines GE Money Home Lending Limited £1.12 million for systems and controls failings
- FSA: publish results of fairness of terms in mortgage contracts review
- FSA: publish guidelines for selling interest-only mortgages
- FSA steps up campaign against mortgage fraud
- Cost of mortgages to increase again
- Gross lending declines in August
- UK property survey report that over a third think it's a good time to buy
- Tighter lending criteria and falling house prices discourage first-time buyers

Market Watch

- Financial Turmoil: the week that was.....
- Lehman Brothers
- HBOS and Lloyds TSB Merger
- Bank of America buys Merrill Lynch
- AIG rescued
- Federal Reserve plans bad debt bail-out
- FSA to review city bonus culture

And also.....

- Silent calls fine for Barclaycard
- FOS: financial businesses complaints publishing
- OFT publishes updated unfair contract terms guidance
- HMT proposes changes to Financial Promotion Order
- Oftcom issues revised statement of policy on the persistent misuse of an electronic communications network or service
- BERR: New teams taking the fight to loan sharks
- Record number of savers search for lost accounts
- SEPA FAQ document issued by EPC
- PSD: consultation paper produced in relation to the FSA Handbook
- FSA extend financial advice to students

Consumer Credit

OFT: Provision of credit information services to be licensed under new CCA requirements

From the 1 October 2008, the OFT has advised that consumers who pay for credit information services will have greater protection. The changes mean that any business wishing to provide these services will need to hold an appropriate consumer credit licence. In order to be considered fit to hold such a licence, it will need to be able to demonstrate that it is not engaged in any unfair practices. Such practices include, making misleading claims to consumers about the services it



ADDLESHAW GODDARD

can provide, either in advertisements or via its website. Please click [here](#) for more information. [Back](#)

The Consumer Credit Act 2006 (Commencement No. 4 and Transitional Provisions) (Amendment) Order 2008 published on OPSI

The Order has been published to correct the date on which Schedule 3 of the Consumer Credit Act 2006 (Commencement No. 4 and Transitional Provisions) Order 2008 comes into force - from 1 October 2008 to 31 October 2008. The Order brought into force certain provisions of the CCA 2006 which amend the Consumer Credit Act 1974 and was the final commencement order made. Please click [here](#) to access the Order, [Back](#)

Consumers set to be able to take advantage of falling credit cards fees

Fees for balance transfers on credit cards are set to come down as the credit card companies compete for business, according to comparison website MoneyExpert.com. As the market approaches saturation point in terms of 0% balance transfer deals, MoneyExpert.com is predicting that transfer fees will prove to be the new battleground for providers. Barclaycard led the way by reducing the transfer fee on its OnePulse card from 3% to 2.5% whilst maintaining a competitive – if not market-leading – 14 month 0% deal. It is anticipated that other providers are likely to follow suit. Please click [here](#) to read the full article. [Back](#)

OFT publishes updated debt management guidance

The OFT has published updated guidance on debt management services. This updates the OFT's previous debt management guidance from December 2001 by incorporating the reforms introduced by the Consumer Credit Act 2006. Please click [here](#) to access the new guidance. [Back](#)

OFT and MoJ produce joint statement warning consumers against claims management companies

The Claims Management Regulator at the Ministry of Justice and the Office of Fair Trading are warning consumers to think carefully before responding to businesses claiming that they can arrange for outstanding balances under loan, credit card and other consumer credit agreements to be written off and secure compensation. They are advising them to seek

independent advice before signing up. The press release also has information for consumers who are in debt and gives contact details of organisations that can give advice. Please click [here](#) for the press release. [Back](#)

OFT: New Credit Licence Guidance

The OFT has issued new guidance relating to its Consumer Credit Licensing. The guidance replaces the previous guidance from March 2008 and relates to the 1 October 2008 changes. Please click [here](#) for a link to the document. [Back](#)

BERR publishes September 2008 stakeholder notice

BERR has published the latest update on the implementation status of the Consumer Credit Act 2006. It includes updates on the Legislative Reform (Consumer Credit) Order 2008 (LRO) and updates on gone-aways. Please click [here](#) to access the BERR document. [Back](#)

Insurance

Competition Commission's Revised Timetable for PPI Reports

The Competition Commission has now published its revised timetable for the publication of reports as part of the current inquiry into PPI. Revised dates are as follows:

Early October - Provisional Findings on Retail PPI published.

During October - Provisional Decision on Remedies published.

December 2008/January 2009 – Final Report published – *Source: FLA* [Back](#)

Britons are being misled into taking out Payment Protection Insurance (PPI) on their credit cards

In a press release published on 10 September 2008 Which? the consumer association claims that almost 1.3 million people mistakenly believed that taking out PPI would improve their chances of being approved for a credit card. According to their research, over 9.8 million people in the UK have credit cards with PPI



ADDLESHAW GODDARD

attached. Of these, 13 per cent wrongly believed that getting PPI was a condition of their credit card deal or that their application was more likely to be accepted if they had it. Credit card PPI is worth more than £970m a year to the industry and each policy costs consumers an average of £127.60. In a poll, 28% were told by their provider that having PPI was a good idea. Please click [here](#) for a copy of the press release. [Back](#)

Advertising

FSA and OFT publish guide to dually-regulated credit advertisements

The FSA and the OFT have published a guide setting out their respective responsibilities under the Financial Services and Markets Act 2000 and the Consumer Credit Act 1974 in relation to advertising. The guidance includes user friendly flowcharts to enable the user to decide on who their regulator is. Please click [here](#) to access the guidance. [Back](#)

ASA Adjudication

Barclays Bank plc t/a Barclaycard - 1 complainant

The advertisement showed a man entering a motel room to find his friend handcuffed to a bed. The handcuffed man said "she's stolen all my stuff." His friend replied "Course if you had a Barclaycard all your fancy gadgets could have been insured, laptop, phone, new camera." The on-screen text stated "Maximum 3 gadgets totalling £500. Terms and conditions apply. Monthly premium £8.99 debited after 6 months unless you cancel ... ". The voice-over at the end of the ad stated "Apply online for free gadget.

The ASA upheld complaints from viewers on the basis that text implied a greater level of cover than was on offer. Whilst the advertisement used qualified wording such as 'could' (and moreover that in fact it was possible to buy a laptop, phone, new camera for less than the £500 limit on the policy) the overall effect of the advertisement was misleading.

PRINCIPLE: In reviewing advertisements it is important to establish an overall level of consistency between the portrayal of a product and any key qualifications. This can often be finely balanced judgement. Moreover advertisers need to regularly assess 'standard' text including on-screen text for accuracy and compliance

with the BCAP Guidance on On-screen Text and Subtitling in Television Advertisements.

Please click [here](#) to access the adjudication. [Back](#)

Mortgages

FSA fines GE Money Home Lending Limited £1.12 million for systems and controls failings

During the period from October 2004 to November 2006, the FSA found that systems and controls failings at GE, relating to mortgages subject to a "retention" clause, resulted in 684 borrowers with FSA regulated mortgages suffering loss of more than £2.3 million. The full Final Notice can be accessed by clicking [here](#). [Back](#)

FSA: publish results of fairness of terms in mortgage contracts review

The FSA reports that the results of this review suggest that the concerns that it had in the November 2007 follow-up had not been fully addressed. It found that about a third of the sampled firms have terms in their mortgage contracts that allow them to vary their charges which, in the FSA's view, do not comply with the law and principles set out in the Statement and so may be unfair. Please click [here](#) to access the FSA press release. [Back](#)

FSA: publish guidelines for selling interest-only mortgages

The FSA are advising firms that they should have adequate processes in place to ensure they give due consideration to the repayment strategy of interest-only mortgages. Also, details of the repayment strategy should be recorded as part of its mortgage advice process and that a strategy to repay the capital at the end of the mortgage should form part of the affordability process and a 'sense check' of this strategy should be undertaken. Please click [here](#) to access the full guidelines. [Back](#)

FSA steps up campaign against mortgage fraud

The FSA has launched a website to advise the mortgage industry that it is cracking down on the firms



ADDLESHAW GODDARD

who are - or have been - knowingly involved in mortgage fraud. It lists examples of what it is looking for, recent cases and if you are a mortgage provider what you should do to be aware of fraud in the industry. Please click [here](#) to access the website. [Back](#)

Cost of mortgages to increase again

Mortgage rates, which had started to ease in recent weeks, are rising again, as lenders react to the sharp jump in funding costs triggered by the banking crisis. HSBC and Woolwich are to increase some of their fixed mortgage rates by 25-35 basis points. Both lenders attribute the changes to the rise in wholesale costs. "The cost of funding fixed-rate mortgages has substantially increased over the past two weeks, and as a result Woolwich has had to increase fixed rates as well as making small changes to lifetime tracker rates," said Andy Gray, head of mortgages at Woolwich. *Source: Financial Times, 26 September 2008* [Back](#)

Gross lending declines in August

Gross lending totalled an estimated £21.8 billion in August, a 12% fall from July 2007 and a 36% fall from August 2007, according to the Council of Mortgage Lenders. This is the lowest monthly figure since April 2005 and the lowest August figure since 2002. Exceptionally low housing market turnover and lower than anticipated remortgaging activity will keep monthly lending subdued in the immediate future. Please click [here](#) to read the full CML article. [Back](#)

UK property survey report that over a third think it's a good time to buy

34% of the public think now is a good time to buy a residential property in the UK according to the latest BSA Property Tracker Survey. It suggests that buyers may be starting to think about returning to the market since just 27% of respondents thought so in June's survey. However, despite the optimism of some people, almost half of respondents (48%) disagreed that it was a good time to purchase property. To this group, the prospect of future property price falls was the most significant barrier to buying, and was selected by 64% of these people. Please click [here](#) to read the full BSA article. [Back](#)

Market Watch

Financial Turmoil: the week that was.....

In an unprecedented week in the financial markets which saw the merger of two of the UK's largest banks HBOS and Lloyds TSB, the US government's \$85 billion (£47 billion) rescue of American International Group (AIG), the collapse of Lehman Brothers, and volatile share prices, Alan Greenspan deemed the current economic turmoil as "likely to be judged as the most wrenching since the end of the second world war." Responding to the threat of economic meltdown, the US government used radical state intervention to shore-up its economy. In the UK, the chancellor has asked the FSA to review the 'city bonus culture' role in fostering short-termism and the FSA put short-selling under the spotlight. [Back](#)

Lehman Brothers

Lehman Brothers, the fourth-largest US investment bank, filed for bankruptcy protection on 15 September. In a press release issued by the investment bank on 16 September, Lehman announced that Barclays Capital has signed a "definitive agreement to acquire substantially all of the North American businesses and operating assets of Lehman Brothers Inc.", subject to the approval of regulators and the US Bankruptcy court. [Back](#)

HBOS and Lloyds TSB Merger

Lloyds TSB confirmed on the morning of 18 September that it is paying £12.2bn to take over HBOS in a "landmark day in financial services history" that is intended to create one of the strongest banks in the UK but cause thousands of job losses and branch closures. In an attempt to calm concerns about the health of the banking system, the FSA made it clear that it believed the deal would "enhance financial stability". The Chancellor's statement relating to the merger can be accessed [here](#), the OFT statement can be accessed [here](#) and the FSA statement can be accessed [here](#). The article that discusses the merger in more detail can be accessed [here](#). [Back](#)



ADDLESHAW GODDARD

Bank of America buys Merrill Lynch

Amid the fallout from the collapse of Lehman Brothers, Bank of America secured a \$50 billion (£27.9 billion) share deal to acquire Merrill Lynch. Please click [here](#) to read The Times article. [Back](#)

AIG rescued

The US Federal Reserve has agreed to lend AIG up to \$85bn in emergency funds in return for a government stake of 79.9 per cent and effective control of the company – an extraordinary step meant to stave off a collapse of the giant insurer that plays a crucial role in the global financial system. (Please click [here](#) for more information). The news failed to "end panic on wall street" as shares continued to tumble, please click [here](#) to read more. [Back](#)

FSA to review city bonus culture

Gordon Brown told the BBC he was considering a crackdown on "irresponsible" bonuses. Speaking on the same issue, Chancellor Alistair Darling has pledged action to deal with the "extraordinary turbulence" in the financial system in his speech to the Labour conference. Under pressure to curb the culture of excessive City bonuses, Mr Darling said banks should not behave "recklessly" or do anything that could hurt the wider economy. Lord Adair Turner, who has just started his new role at the Financial Services Authority, said regulators had a right to ask whether banks were paying too much for "unreal" profits and trading practices that stored up problems for the future. Please click [here](#) to read the BBC article. [Back](#)

And also.....

Silent calls fine for Barclaycard

Barclaycard has been fined for the silent calls by OFCOM. The credit provider fined £50,000 after an OFCOM investigation uncovered an extremely high number of silent calls. Please click [here](#) for more information. [Back](#)

FOS: financial businesses complaints publishing

The FOS has released proposals on how it will implement its decision to publish data on the complaints it handles about named financial businesses. This follows an independent report by Lord Hunt of the Wirral which recommended that greater transparency in complaints-handling should include FOS making information publicly available about how individual financial businesses deal with complaints. Please click [here](#) for more information. [Back](#)

OFT publishes updated unfair contract terms guidance

The OFT has published updated guidance on The Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs). The guidance previous OFT guidance which was published in February 2001. Please click [here](#) to access the guidance. [Back](#)

HMT proposes changes to Financial Promotion Order

HM Treasury published a summary of responses to its consultation "Extending employers' freedoms: A consultation on facilitating financial promotions in the workplace" it conducted during 2006. The proposal set out by the consultation paper would enable company pensions administrators to provide written material and make oral promotions about company pensions to employees without needing to be regulated by the FSA. They would also allow employers to communicate to employees about work-related insurance cover without needing to be regulated by the FSA. Please click [here](#) for a copy of the summary of responses. [Back](#)

Ofcom issues revised statement of policy on the persistent misuse of an electronic communications network or service

Ofcom has published a revised statement of policy on the persistent misuse of an electronic communications network including further clarification on steps that can be taken by call centres to minimise the nuisance caused by silent or abandoned calls. Those companies that make calls using automatic diallers should be aware of these changes. Please click [here](#) for more information. [Back](#)

BERR: New teams taking the fight to loan sharks

New specialist teams set up by the Government to crackdown on loan sharks have been successful in



ADDLESHAW GODDARD

many prosecutions. Consumer Affairs Minister Gareth Thomas said: "The new teams have more than 230 investigations underway into loan sharks. The total value of the loans being looked into is more than £3million. The investigations have started to lead to arrests, charges and penalties with more activity expected over the coming months, "these teams are working around the clock to ensure that the credit crunch doesn't drive people into the murky world of illegal money lenders." Please click [here](#) to read the BERR press release. [Back](#)

Record number of savers search for lost accounts

The account tracing website **www.mylostaccount.org.uk** has proved a big success and during the first 6 months it has seen over 140,000 individuals searching online for their forgotten funds. The site that brings together the three existing account search schemes from the British Bankers' Association (BBA), the Building Societies Association (BSA) and National Savings and Investments (NS&I), has assisted people by searching for money left unclaimed in dormant bank, building society and NS&I accounts. This compares with 44,000 claims in 2007, via the BBA's, BSA's and NS&I's own tracing services, prior to the launch of the website. Please click [here](#) for the full BSA article. [Back](#)

Single Euro Payments Area (SEPA) FAQ document issued by EPC

The European Payments Council, the association of banks and banking associations which is setting up SEPA has issued a FAQ document which discusses aspects of compliance with the SEPA Cards Framework for payment card schemes and banks, as well as the conditions for geographical coverage of card schemes within the SEPA. The Q&A document can be accessed by clicking [here](#). [Back](#)

PSD: consultation paper produced in relation to the FSA Handbook

The FSA and FOS have produced Consultation Paper 08/14, "Implementation of the Payments Services Directive - changes to the FSA Handbook". The consultation period ends on 28 November 2008 and FSA intends to publish feedback with Final Handbook text in a Policy Statement in early 2009. Please click [here](#) to access the consultation paper. [Back](#)

FSA extend financial advice to students

The FSA has announced that it will be extending its "Money Doctors" financial education project introducing it to a further fifty universities in 2008/09. The Project was launched in 2005 at Roehampton University. It is delivered through student money advisers and aims to develop new approaches to engage students in higher education to take control of their finances and tackle debt before they face financial difficulties. Please click [here](#) for more information. [Back](#)



ADDLESHAW GODDARD

If you wish to discuss any of the above, or for more information, please contact one of the Financial Regulation Group



Amanda Hulme

020 7880 5853
amanda.hulme@addleshawgoddard.com



David Heffron

0113 209 2390
david.heffron@addleshawgoddard.com



Clare Hughes

020 7544 5347
clare.hughes@addleshawgoddard.com



Rosanna Bryant

0113 209 2048
rosanna.bryant@addleshawgoddard.com