



February 2009

InCredit

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Consumer Credit

[FSA extends waiver to firms on complaints handling in bank charges.](#)

The FSA extended its waiver from complaints handling rules regarding unauthorised overdraft charges for up to six months from 26th January 2009 to 26th July 2009.



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The waiver has been extended due to the test case and it not yet being clear how the banks should be responding to complaints regarding unauthorised overdraft charges. The waiver can be removed by the FSA at any point during this period. Please click [here](#) to access the press release. [Back↑](#)

Judgment issued in OFT bank charges test case

This is the third judgment issued and confirms that certain historic terms relating to charges levied by some of the defendant banks for unauthorised borrowing are not capable of amounting to a penalty at common law. There is one set of terms for one of the banks that is the exception. Please click [here](#) to access the judgment. [Back↑](#)

CCAT quashes OFT decision to revoke consumer credit licence

The OFT inadvertently issued a consumer credit licence to Finance Select Limited (FSL) due to problems with its new licence database. The OFT then issued a "minded to refuse" notice to FSL in error instead of a "minded to revoke" notice. The OFT re-issued the notice as a "minded to revoke" and made a determination to revoke FSL's licence six months later. FSL argued that they had invested significant sums in FSL on the basis that the OFT had granted it a licence. In relation to the "minded to refuse" notice the directors said they had assumed that the OFT had made a mistake since FSL had already been issued with a licence. They did not recall having been given an erratum notice by the OFT at the January 2008 hearing and said that they would not have invested in FSL knowing that it could lose its licence. The CCAT decided that FSL's appeal be allowed and that the OFT's June 2008 determination to revoke FSL's licence be quashed. Please click [here](#) to read the full findings. [Back↑](#)

'Credit card principles' style rules to be made for the debt collection sector?

The BBC has learned that the Government is to hold talks after it emerged a growing number of people are being wrongly pursued by debt collectors. Consumer Minister, Gareth Thomas, is to meet representatives of the debt collection industry. It is thought that there may be some kind of 'credit card principles' style rules agreed and made as a result. Please click [here](#) to read the BBC article. [Back↑](#)

Multiple agreements case heard in the High Court

A consumer credit multiple agreement case has been heard in the High Court. Although there have been a number of County Court cases and multiple agreements have made an appearance in higher courts (*Story, Dimond*), this is the first High Court decision dealing with the point head on after detailed argument. The agreement concerned related to both credit provided for re-financing and as cash in hand. The judge followed the view of Prof. Goode. He appeared influenced by Lord Hoffman's comments on section 18 in the *Dimond* case and also queried whether the re-financing of an existing secured loan is restricted use credit (i.e. the point decided in the *Hannah* case). An appeal to the Court of Appeal is likely. Please click [here](#) to access the case. [Back↑](#)

CC publishes its final report on PPI

On 29 January 2009 the Competition Commission (CC) published its final report into the Payment Protection Insurance (PPI) market, setting out the measures it has decided are needed to introduce competition between suppliers. In its report the CC concluded that businesses offering PPI alongside credit face little or no competition when selling PPI to their credit customers. Many consumers are unaware that they can buy PPI from other providers, they rarely shop around to compare prices and terms and conditions of PPI policies and they rarely switch PPI providers. To address the lack of competition, the CC will be introducing a package of measures to introduce competition in the market including:

1. a ban on the sale of PPI during the sale of the credit product and for seven days afterwards;
2. a prohibition on single-premium policies;
3. personal PPI quotes;
4. annual statements; and
5. measures to make sure that improved information is available to consumers to make it easier for them to compare and search for products and switch policies at a later point.

Please click [here](#) to access the CC website. [Back↑](#)



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[OFT guidance on regulated and exempt agreements](#)

The Office of Fair Trading has published a guidance paper on regulated and exempt agreements under the Consumer Credit Act 1974 following amendments brought about by the Consumer Credit Act 2006. Those changes had effect from 6 April and 31 October 2008. Please click [here](#) to access the guidance document.

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[OFT publishes updated statement of consumer protection enforcement principles](#)

The OFT has updated its statement of consumer protection enforcement principles, following its annual review of the principles and its enforcement practices illustrating that it is meeting its duties as an enforcer under the Legislative and Regulatory Reform Act. This requires them to comply with the Regulators' Compliance Code, a statutory code of practice which came into force on 6 April 2008 and is aimed at embedding the Hampton and Macrory principles into regulatory practice. Part 4 of the Regulatory Enforcement and Sanctions Act 2008 also requires authorities to review the performance of their regulatory functions and remove any unnecessary burdens that they may be imposing. Please click [here](#) to access this statement document. [Back↑](#)

[Appeal made to the Information Commissioner relating to credit card default charges](#)

The complainants sought information from the OFT by making a request under the Freedom of Information Act. The identity of the complainants has not been revealed and the request was refused. The complainant appealed to the Information Commissioner and the Commissioner's decision is summarised below. The complainants mistake was to make a number of requests the costs of which could be aggregated and thereby refused.

"The complainants requested information from OFT regarding its investigation into credit card default charges. OFT explained that it held the requested information but to provide it would exceed the appropriate cost limit under section 12. The Commissioner found that OFT was entitled to aggregate the cost of responding to the request under section 12(4) of the Act and that OFT correctly relied upon section 12(1) as a basis for not providing some of the information. However, the Commissioner found that in failing to inform the complainant that the information

requested in part 1 of the request was not held OFT, if breached the requirements of section 1(1)(a). OFT also breached the requirements of section 1(1)(b) and section 10(1) by failing to disclose the information requested in parts 2 and 4 of the request within twenty working days of the request. In addition, the Commissioner found that OFT did not provide adequate advice and assistance in accordance with the requirements of section 16(1).

Section of Act/EIR & Finding: FOI 12 - Complaint Not upheld, FOI 16 - Complaint Upheld". Please click [here](#) to access the decision notice. [Back↑](#)

[Home credit loans 'extortionate'](#)

A BBC article reports that the Conservative party has warned that short term loans can have extortionate interest rates. Some pay-day loan companies charge as much as 10,000% annual interest on their loans, according to a report from the shadow housing minister. The minister, Grant Shapps, said such rates of interest were "obscene". He said the extortionate interest charges were due to a lack of competition in the home credit market. He added that the problem could be tackled by the wider use of credit unions and the creation of a national financial advice service. Please click [here](#) to read more of this article. [Back↑](#)

[OFT issue consultation response to its Irresponsible Lending Project Scoping Paper](#)

The OFT has published its response to the consultation on the scope of its Irresponsible Lending Project which was launched on 1 August 2008. The OFT has decided that the project should adopt a wider scope to include behaviour and practices around a borrower's ability to repay credit, credit advertising and marketing, selling techniques, product design, use of appropriate credit scoring techniques, and the handling of arrears cases. Please click [here](#) to read the document. [Back↑](#)

Insurance

[Update on FSA work on the sale of PPI](#)

In a press release published on 20 January 2009, the FSA welcomed the move by Alliance & Leicester, Barclays, The Co-Operative Bank, Lloyds Banking Group (including Lloyds TSB, Halifax, and Bank of Scotland), and RBS/Natwest to stop selling single



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premium Payment Protection Insurance (PPI) with unsecured personal loans by the end of January 2009. The press release explains that some of these firms, along with other market players, now offer or plan to offer regular premium PPI instead of a single premium product. The FSA expects other firms still selling single premium PPI to take note of these developments. Furthermore, the press release clarifies that the FSA recognises the importance of appropriate protection insurance in the current economic climate, but remains concerned over the standard of sales of single premium PPI. "Customers being sold this type of product should be told how the product works, what it covers and how much it costs – especially as the cost of the PPI is added to the loan and interest charged on this amount."

Please click [here](#) for copy of the press release.
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Advertising

ASA Adjudications:

Dataforce Accounts & Debt Management Ltd – 1 complaint upheld

Two TV ads for Dataforce, a debt consolidation company, were broadcast on a Bengali channel, Channel S:

Issues:

1. Ad 1 began with a male voice-over, speaking in Bengali. Channel S provided us with a translation; the voice-over stated, "Do you want to free yourself from debt in nine months? If you have an outstanding credit card balance, do you know we can write off that?" , "Do you have any credit card balance outstanding? Do you have any secured loans? Have you taken any car finance? Do you have any mortgages more than 3 years old?" The voice-over continued, "Keep it in mind that you will be completely debt free within three to nine months and your credit history will be clean." Contact details for Dataforce were shown.
2. The second ad began with a female call centre operative answering the phone with, "Dataprotect can I help you?". A male voice-over, this time in

English, stated, "Affected by Payment Protection Insurance, PPI? Taken a policy to cover your loan, or received unfair bank charges? Did you know, you are entitled to compensation? Dataforce are specialists that [are] licensed to claim your money back."

ASA contacted Dataforce who only responded by translating some literature for them. ASA found this to be in breach of their broadcast license conditions and were unable to find whether or not Dataforce could write off debt to the extent stated if they were not provided with appropriate evidence. ASA also expressed that they were unaware of legislation which allowed debtors to claim for compensation under normal circumstances.

Principle: All correspondence must be responded to appropriately, otherwise you are likely to be in breach of your broadcast license conditions.

Please click [here](#) to access the full adjudication.
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Cartel Client Review Ltd - 1 complaint upheld

A radio ad for a credit card compensation company stated, "How much do you owe on your credit card? Is it still your flexible friend? Probably not. Did you know that if you took your credit card out before April 2007 your outstanding balance could be completely written off? Cartel Client Review can check your credit cards to see if you can claim to have your balance completely cleared. To find out more visit cartelclientreview.co.uk or call 0845 XXX XXXX, 0845 XXX XXXX. Terms and conditions apply".

Issues: The complainant complained that this was misleading as the circumstances in which credit card debt could be written off in this way was limited.

Cartel Client Review Ltd provided the ASA with documentation of a TV programme and other documentation to argue that in most cases credit card debt would be written off in this way. The ASA found that this evidence was not just based on credit card debt but also their work on unsecured personal loans. The ASA furthermore had issues with the claim as the documentation provided to show that they had written off credit card debt was proposed in a numerical form and not a percentage. Therefore the information did not



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correctly identify what proportion of the total client base the successful clients represented. The ASA also argued that to write off credit card in this way is a timely and costly process that involved legal proceedings.

ASA advised that the ad not be broadcast in its current form again.

Principle: Make sure that your advertising is clear as to what service is being offered and when advertising the service, ensure that it is properly depicted and not misleading to consumers.

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

ASA advice on banner adverts

ASA has issued advice on banner ads and the small print that is included in them. It has stated that it is happy with the 'one click away' approach as long as the significant pieces of information that are likely to influence a consumer's decision to take up an offer are included in the ad and not just hidden away somewhere on the website. Please click [here](#) to access the advice [Back↑](#)

OFT seeks substantiation from sale and rent back firms over adverts

The OFT has issued formal notices to 16 sale and rent back firms asking them to substantiate the claims they make in their adverts. Typical examples of the claims made in adverts by these 16 firms include that customers:

1. can choose to stay in their properties after they are sold, by renting them back as tenants for as long as they wish, at a fair market rate
2. can buy back their properties at an agreed point in the future, and
3. will have low rent periods and flexible rental terms.

The firms have been given 14 days to reply to the OFT notices. Based on their replies the OFT will make a decision whether or not to take further action, against these firms, including prosecution. Please click [here](#) to access the press release.

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

Mortgages

Homeowners take on banks over SAMS

On 24 January 2009 *the Guardian* reported that the Reading-based law firm RWP has been challenging banks over shared appreciation mortgages (**SAMS**). SAMS are mortgages where instead of charging interest on the loan, banks take a share of the increase (if any) of the value of the house when it is sold or the owner dies. The article argues that due to the explosion of the house prices during decade, borrowers ended up paying an excessive interest rate. Please click [here](#) to read the full article. [Back↑](#)

Mortgage arrears set to increase significantly

The Council of Mortgage Lenders has issued a warning that the number of mortgages in serious arrears is set to double in 2009. It follows worsening conditions in the housing market. The CML has predicted that loan repayments would exceed the number of new loans for the first time since 1965. The number of mortgages that will be in serious arrears may top 500,000 which will be 4.41% of all home loans. Please click [here](#) to access the article. [Back↑](#)

Nationwide brings back the 95% mortgage

The 95% mortgage is back as Nationwide became the latest lender to loosen its lending criteria. However, the new deal is only available for existing borrowers moving home, and does not come cheap. On a two year fixed rate, for example, there is no fee but the rate charged by the building society is 7.18%. Source: Citywire, 17 December 2008. [Back↑](#)

Market Watch

A fairer credit card by Saga

Saga has launched a new credit card exclusively for their members. The card is thought to be an innovative idea and beneficial for consumers as it allows the card holder to transfer a balance at 0% for the first six months, but when they make repayments, the money reduces the most expensive debt first. The card holder can therefore use the card for purchases and still retain



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the 0% interest facility on the balance transferred. Please click [here](#) for more information. [Back↑](#)

Natwest claims first with mobile money transfer

Reports out are that NatWest has launched what it claims is the first international money transfer service over mobile phones offered by a UK bank. From Christmas, customers of its Polish Welcome account were able to send money home to accounts run by Polish bank PKO BP. Please click [here](#) for more information.

HSBC is to launch a new 2.99% mortgage

HSBC is to launch a new mortgage with a rate of just 2.99% next month - its cheapest-ever home loan deal. The two-year discount mortgage is only available to its Premier customers, who pay a monthly fee for their current account services. It is also only open to those with a deposit of 25 per cent or more. This deal makes HSBC the first lender to offer a loan below 3% since the credit crunch began. *Source: Independent, 15 January 2009.* [Back↑](#)

Payments

EC update its PSD Q&A document

The European Commission has again updated its Q&A paper on the PSD. The new answers are highlighted in the document in red. Please click [here](#) to access the document. [Back↑](#)

Article on SEPA, "One year on: Why has it been so slow?"

The Single European Payments Area (SEPA), designed to make it cheaper to move money around the EU was launched on 28 January 2008 and now been around for nearly a year. Reports are out that criticise the banks' progress in translating the framework into services for customers and has been described as painfully slow. One proposed reason for this is that there is little business benefit to the banks. Please click [here](#) to read the article in full. [Back↑](#)

HMT issues consultation on revising the Electronic Money Directive

HMT has published a consultation on the European Commission's proposals to revise the Electronic Money Directive. The Commission's proposals involve the repeal of the existing EMD and replacing it with a version that is aligned with the Payment Services Directive which is to be implemented by November 2009. Please click [here](#) to access the consultation. [Back↑](#)

Commission update Q&A document on PSD (again)

The Commission has again updated its Q&A document on the PSD. This is the second edition in two weeks. Please click [here](#) to access the informative document. [Back↑](#)

Commission publish decision on setting up a Payment Systems Market Expert Group

The European Commission has published a decision advising on the establishment of a new group of experts in the field of payment systems. This new group will be called the Payment Systems Market Expert Group. The Commission is currently inviting payment experts and users to apply for membership of the Group. Please click [here](#) to access the decision. [Back↑](#)

EC starts cartel investigation into smart card chip producers

Reports are out that the European Commission has started an antitrust investigation into 'smart card chip producers' following dawn raids in several member states in October last year. The cartel probe targets companies such as German-based firm Infineon and the technology behind payments cards, ID cards and SIM cards for mobile phones. The Commission believes the companies involved may have infringed European competition rules governing price-fixing, market-sharing and the exchange of commercially sensitive information. Smart card chips are used to add security and data functions on cards in the payments and telecommunications industries, as well as ID functionality on, for example, access cards in hospitals. *Source: MLex, 6 January 2009.* [Back↑](#)

Faster Payments Service volumes reach new peak

APACS reports that six months after the go-live date for 'Faster Payments' nearly four million internet, phone and standing order payments are processed in a single



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day. Introduced at the end of May 2008, the new system processed 3,907,719 payments on its latest peak day, on 1 December 2008. Please click [here](#) to read the full article. [Back↑](#)

And also.....

[BERR: New plans for cash flow and credit for small and medium businesses](#)

Business Secretary Lord Mandelson has unveiled a package of measures designed to address the cash flow, credit and investment needs of small and medium businesses. The support package, which builds upon the commitments outlined in last November's Pre-Budget Report, consists of loan guarantees and a new Enterprise Fund aimed at helping companies struggling to access finance for working capital and investment. Please click [here](#) for more information. [Back↑](#)

[FSA and OFT: Revise concordat on UTCCRs and Enterprise Act 2002](#)

This version was effective from 18 December 2008. Under this Concordat, the FSA and the OFT agree to coordinate enforcement action and cooperate in all ways permitted by law to ensure the effective and consistent delivery of consumer protection in relation to unfair commercial practices under the Unfair Terms in Consumer Contracts Regulations 1999 and the Enterprise Act 2002. Please click [here](#) to access the concordat. [Back↑](#)

[Fraudster in £30,000 deception trial given suspended prison sentence, a curfew enforced by electronic tag and ordered to pay compensation](#)

A fraudster has been given a suspended prison sentence, a curfew enforced by electronic tag and ordered to pay compensation after admitting defrauding his creditors. Third-time bankrupt and electrician Stephen Palmer, 51, from Maidstone in Kent, tried to cheat his creditors out of around £30,000 in March 2004. Passing sentence at Southwark Crown Court, Judge James Wadsworth QC said Palmer had committed a deliberate fraud. The Judge said Palmer had escaped a substantial prison sentence only through his willingness to repay the money he stole. Please click [here](#) for more information. [Back↑](#)

[FSA Consumer Purchasing and Outcomes Survey](#)

On 29 January 2008 the FSA published the results of its Consumer Purchasing and Outcomes Survey. The Report explains that under the first of its strategic aims, 'to help retail consumers achieve a fair deal', the FSA has committed to ensuring that consumers receive and use clear, simple and relevant information from the industry and from the FSA. The Consumer Purchasing Survey was commissioned to provide information in relation to this objective. Please click [here](#) for a copy of the report. [Back↑](#)

[FSA Chairman sets out agenda for reforming Financial Regulation](#)

The FSA published on its website a speech given by Adair Turner, chairman of the FSA at The Economist's Inaugural City Lecture on 21 January 2009.

In his speech Lord Turner addressed the root causes of the current global financial crisis and outlined three key long-term regulatory initiatives to reduce the probability and severity of future financial crises. They are as follows:

1. New approaches to capital adequacy, entailing more capital held against risky trading strategies and counter-cyclical capital requirements to build up adequate buffers during good economic times which can be drawn on in bad.
2. A new liquidity regime focused not just on individual firms' liquidity but also on market-wide risk.
3. Ensuring that financial activity is regulated according to its economic substance not its legal form.

Lord Turner said that these themes would be outlined more fully in the Turner Report which will set out the changes the FSA has already made, those where there are proposals in principle but need consultation, and those where the regulator has defined objectives but needs to play a role in achieving international agreement. Please click [here](#) to access the speech. [Back↑](#)

[FSA consultation: "Financial Services Compensation Scheme reform: Fast payout for depositors and raising consumer awareness"](#)

In this consultation, the FSA sets out proposals to speed up the payment of compensation by the FSCS to



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depositors in the event a deposit-taking firm fails, in order to minimise hardship to depositors in these circumstances. The FSA also outlines the steps it proposes to take to increase public confidence in the FSCS by increasing awareness and understanding of these arrangements. The FSA has indicated that the proposals for faster FSCS payout and increased consumer awareness of the FSCS will predominantly require changes to FSA rules. A draft of the new proposals (the draft Financial Services Compensation Scheme (Banking Compensation Reform) Instrument 2009) is set out in Appendix 1. Comments can be made on the proposals until 6 April 2009. Please click [here](#) to access the consultation document. [Back↑](#)

[FSA discussion paper on Consumer Responsibility](#)

The Financial Services Authority has launched a discussion paper on Consumer Responsibility to explore what steps the regulator or others could take to help consumers understand and protect their own best interests more effectively. Please click [here](#) to access the document. [Back↑](#)

[1.5 million people to benefit from free cash machines in low-income areas](#)

HMT has issued a statement stating that around 1.5 million people will benefit from the placement of over 600 non-charging cash machines in low income areas. Reporting on substantial progress made by the ATM Working Group, they confirmed that:

1. 527 new free access cash machines are now operating in low income areas across the country;
2. a further 136 locations for free access cash machines have now been identified and it is planned that these ATMS will be in place in the next 6 months; and
3. work will continue to ensure that a free-to-use ATM will be introduced in every possible target area.

This follows on from the initiative that was started in 2008. Please click [here](#) for more details. [Back↑](#)



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



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