



March 2009

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Consumer Credit

OFT: Draft second charge lending guidance

OFT has published a draft guidance on second charge lending for consultation, the deadline for responses is 8 May 2009. This sectorial guidance is additional to the work on irresponsible lending and should be read in conjunction with the non-status lending guidance (published in 1997). It is thought that the guidance follows a review of arrears and repossession policies and practices in the second charge sector. The guidance applies to lenders and brokers. Please click [here](#) to access the guidance and [here](#) to access the press release.

Unarranged overdraft charges test case

The Court of Appeal has reached its decision on the test case regarding charges for unauthorised overdraft charges. The judges agreed with the previous two judgments and ruled that charges could be assessed for 'fairness'. The Court was not looking at whether charges actually are fair as this is subject to further work. Please click [here](#) to access the OFT press release and [here](#) to access the BBA press release.

OFT uses criminal powers under CPUTs

The OFT has released information regarding its first consumer based criminal investigation. The OFT launched a criminal investigation into a suspected unlawful pyramid scheme and carried out raids in the Bristol area. The OFT executed entry warrants at three premises, accompanied by police who arrested three women for alleged involvement in the operation and promotion of a suspected pyramid scheme. The OFT also visited two other premises in Bristol and seized evidence. This investigation is the OFT's first use of new criminal powers under the Consumer Protection from Unfair Trading Regulations 2008. Please click [here](#) to access the press release.

Risk-based step-changes in interest rates on credit cards and store cards

The regulator's response to the request for this matter to be dealt with as a "wider implications issue" is now published on the wider implications website (www.ombudsmanandfsa.info). FOS [wrote](#) to the OFT

in December 2008 explaining its concerns on risk-based pricing, the OFT [responded](#) shortly after indicating that it supports FOS in this area and that it hopes that the credit card principles will go some way to achieve this. It also added that it would look into this when drafting the next Financial Services Plan. Finally, FOS explains that as the consumers involved in these cases are often in straitened financial circumstances, "the ombudsman service is proceeding with the cases it has received". Please click [here](#) to access the wider implications website.

OFT imposes requirements on a debt collection company

The OFT has issued a press release detailing their successful imposition of requirements on a licensee under the new CCA 2006 licensing powers. The action was brought against a debt collection company. It is likely that the action was commenced as part of its investigation into debt collection practices and the several warning letters the OFT announced it had sent out in April 2008. The terms of the requirements imposed are of note and firms may wish to review their collection processes in light of them. In particular, the OFT has objected to debt collectors raising the prospect of legal proceedings where it is unlikely that legal proceedings will be brought. The link to the OFT press release can be accessed [here](#).

FOS publishes some recent case studies of its consumer credit complaints

Issue 75 of the Financial Ombudsman's "Ombudsman News" contains a feature on consumer credit complaints which includes case studies. Case studies of interest include examples of claims management companies with poor administration and consumer complaints of 'harassment' by debt collectors. Please click [here](#) to access the section of the Ombudsman News which lists the consumer credit cases.

New credit card summary box guidance

The credit card summary box which is provided with all marketing materials has been revised by APACS. This is as a result of recommendations made in the Office of Fair Trading's Credit Card Comparisons Report and the credit card industry's own consumer research. The recommended changes will be implemented across the industry by 30 June 2009. Please click [here](#) to access



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the new guidance and [here](#) to access the APACS press release.

Financial Services Skills Council (FSSC) is calling for views on new national occupational standards planned for debt collections

The FSSC state that there is a rapidly increasing demand for the skills and knowledge required for handling debt collections situations within the financial services industry. As a result of their work in the sector, they have prepared a consultation draft of National Occupational Standards for debt collection personnel. The intention is that these will support their existing lending and credit suite of standards. The closing date for the return of questionnaires for consultation is Friday 27 February. Please click [here](#) to access the FSSC press release and [here](#) to access the draft consultation.

Banks increasing their use of set-off to pay credit card debts

The BBC reports that banks are increasingly using their power to transfer money from current accounts to cover credit card debts. This is leaving customers and homeowners especially, unable to pay mortgages, a charity has claimed. Citizens Advice is calling on banks to scrap the practice, which allows them to transfer funds without permission. It says it has seen a 25% rise in the number of such cases in the past two years. Please click [here](#) to access the article.

Private Members Bill proposed: The Lending (Regulation) Bill

Russell Brown MP (Labour) has published a Private Member's Bill - the Lending (Regulation) Bill, which received its Second Reading on Friday 27 February 2009.

The main features are:

- a ban on sending unsolicited credit card cheques to individuals;
- a ban on increasing a customer's credit limit on an unsolicited basis;
- a duty on lenders to provide all customers taking out unsecured loans with information on the Charging Orders Act 1979. This information would be provided in advertising

material and via conversations with customers. A loan could not be agreed until the customer had provided written confirmation that they understood the information provided.

The FLA reported on the outcome of the second reading stating that Consumer Affairs Minister, Gareth Thomas MP, welcomed the key principles behind the Bill adding that he was keen it should make progress but that some proposals would need further development or could be tackled elsewhere. The Minister:

- supported a ban on credit card cheques and added that there "was worrying evidence they were used for essential items and cashflow shortfalls";
- was sympathetic to a ban on credit card limit increases but consultation would be required before secondary legislation could be made;
- supported the principle of warning consumers about charging orders – this would be addressed as part of the consultation on the implementation of the Consumer Credit Directive;
- the proposal for a standard method of calculating interest rates was rejected.

Mark Prisk MP on behalf of the Conservatives welcomed the sentiment behind the Bill. However he expressed doubts on some of the drafting. The debate at Second Reading will be continued on Friday, 15 May. It is scheduled to complete its House of Commons stages in early June. The House of Lords will be obliged to table a similar bill which, if successful, would be adopted in the Autumn. To access a copy of the Bill please click [here](#).

Insurance

FSA urges all firms to stop selling single premium PPI

The FSA announced that it has written to all firms still selling single premium Payment Protection Insurance with unsecured personal loans (SP PPI UPL) asking



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them to withdraw the product as soon as possible, and by no later than 29 May. The letter from Jon Pain, the FSA's managing director of retail markets, reminds firms that the Competition Commission's final report on its PPI market inquiry, published on 29 January, included a remedy that prohibits the sale of single premium PPI policies after 1 October 2010. The letter asks for a written response to the request to withdraw SP PPI UPL to be sent to the FSA by 31 March 2009. For a copy of the letter please click on the following link: [Dear CEO Letter](#) Source: FSA [press release](#), FSA/PN/031/2009, 24 February 2009.

Advertising

Claims management businesses warned about misleading marketing claims

Businesses that mislead the public by claiming they can arrange for unpaid loans, credit card debts or other consumer debts to be written off have been told to stop or face action in a press release from the Ministry of Justice. The press release highlights the guidance it produced in early January. Please click [here](#) for the press release and [here](#) for the guidance.

Small print concerns in marketing material

It has been reported that almost half of consumers believe companies use small print to make money out of them, a survey has revealed. Some 42% of respondents to a poll about privacy and marketing thought firms used small print to sell on their details and almost 50% said it was deliberately designed to be as woolly as possible. The results come from a study by the Information Commissioner's Office, which is calling for an overhaul of privacy and marketing small print. Please click [here](#) to access the full article.

Mortgages

Protecting consumers in the sale and rent back market

HMT has issued a consultation document on strengthening protection for vulnerable homeowners.

HMT is proposing that companies offering sale and rent back agreements, which may target homeowners facing repossession, should be brought within the scope of FSA regulation. The consultation sets out the details of the proposed legislation and will close on 1 May 2009. The FSA has published a separate consultation alongside on the detail of its proposed new regime. Please click [here](#) to access the HMT consultation document and [here](#) to access the FSA consultation document.

Gordon Brown calls for the FSA to curb 100 per cent mortgages

The Prime Minister writes in his article published in the Observer on 22 February, that he would like the FSA to curb 100 per cent mortgages. "*We have got to get the balance right between serving home owners better and encouraging responsibility in the housing market. This is a duty on banks and building societies, but we have also asked the Financial Services Authority to look at how in the future we should control new mortgages for more than 100% of house value*". He also comments on the current banking regime and how he sees the future in banking. Please click [here](#) to access the article.

Government publishes final design of Homeowners Mortgage Support Scheme

The Government has published the final version of its Homeowners Mortgage Support Scheme. The Scheme is designed to safeguard homeowners who are experiencing temporary financial difficulties against the risk of losing their home. The Government is now working with lenders to agree the Scheme documentation and plans to make the Scheme available in April 2009. Please click [here](#) for more information.

OFT launches market study into home buying and selling

The OFT has launched a market study into home buying and selling, following two months of discussion with interested parties on its scope. The study will take a comprehensive look at the market for home buying and selling services. It will consider:

- competition on price and quality between service providers, principally estate agents;



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- the prospects for entry by new business models, including Internet-based models;
- whether the existing regulatory framework provides the right balance between protecting consumers who are buying or selling a home and ensuring that the market remains open to competition and innovation;
- the relationships between estate agents and other service providers such as mortgage brokers, surveyors, solicitors and other professional advisors.

Please click [here](#) to access the full press release.

'Self-cert' mortgages disappear from market

Self-certification mortgages, which do not require proof of a borrower's earnings, have almost vanished from the market as banks no longer want to lend to customers who are not able to demonstrate regular or reliable salaries. Brokers report that just two providers are still offering these types of loans - The Mortgage Works, the specialist lending arm of Nationwide, and Platform, a division of Britannia. BM Solutions and Bank of Scotland, the HBOS brands that are now part of the Lloyds Banking Group, withdrew from the market last week. Self-certification mortgages had been popular with self-employed people whose income may fluctuate. They also provided a way for employed people with additional income to make sure their total earnings were taken into account when applying for a loan. *Source: Financial Times, 7 February 2009.*

Payments

Payment Services Regulations 2009 - Final regulations published

HMT has published the final version of the Payment Services Regulations 2009 (the Regulations). The Regulations implement the EC Payment Services Directive (the PSD) in the UK. The final Regulations were laid in Parliament on 9 February 2009 and will enter into force (primarily) on 2 March 2009. The PSD has to be implemented in the UK and all Member States by 1 November 2009. The UK Government stated that it was 'committed to early implementation in

order to help firms consider the incoming requirements and prepare for compliance'. The Regulations can be accessed by clicking [here](#) and the Explanatory Memorandum can be accessed by clicking [here](#). The HMT press release which gives some background to the Regulations and the PSD can be accessed [here](#).

Payment Services Directive

HMT has published a summary of responses from its Consultation on the draft legislation to implement the Payment Services Directive. There were a total of 37 responses from a cross-section of interested stakeholders. Please click [here](#) to access the response document. It has also published its impact assessment which can be accessed by clicking [here](#).

The FSA as part of its role as regulator, has set up a dedicated PSD website (click [here](#)) and a Q&A page (click [here](#) to access).

APACS publishes key statistics document

APACS has published a key statistics document outlining statistics for plastic usage, cash machine usage and clearing (among others) for 2008. Figures are illustrated alongside figures from 2007. Please click [here](#) to access the document.

APACS publishes December spending statistics

APACS has released December 2008 spending figures, which show that spending on plastic over the Christmas period reached £32.3 billion, with £4.7 billion spent online.

- £32.3 billion spent on cards in December £21.6bn on debit and £10.8bn on credit;
- Average value of a card transaction was £44.95, the lowest for six years.

To access the full statistics, please click [here](#).

Cheque and Credit Clearing Company marks 350th anniversary of the cheque

In February 2009 the cheque celebrates its 350th birthday. As APACS reports, one of the earliest cheques known to still be in existence in the UK is dated 16 February 1659. To commemorate the occasion a report by the Cheque and Credit Clearing



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Company has been written. Please click [here](#) to access the report and [here](#) to access the summary of the occasion on the APACS website.

Monilink reports growing user acceptance of mobile money transfer

UK m-banking company Monilink is reporting a large increase of people interested in mobile payments, with over half a million pounds transferred by users in the past month. The Monilink mobile money service is currently available to over half of UK adults including customers of Alliance & Leicester, first direct, HSBC, Lloyds TSB, NatWest, Royal Bank of Scotland and Ulster Bank. Customer surveys indicate that the most requested new services are the ability to move money to third party accounts, such as topping-up travel cards, charging electricity and gas pre-payment accounts and paying-off credit card balances. Please click [here](#) to read the full article.

Market Watch

Barclaycard freezes or cuts credit costs to help customers in financial difficulties

Almost 12 million Barclaycard customers will have their interest rates cut or frozen until June after the credit card provider pledged to help customers in financial difficulty. The firm said no customers would have their rates increased for the next four months while some three million low-risk customers would have their rates cut by between 2.4 and five percentage points. Barclaycard – part of the banking giant Barclays – also said it would set up a new advice helpline and pledged not to chase customers for payments for two months provided they were "actively working" with its advisers. Credit card providers have come under growing pressure from the government in recent months to introduce fairer terms for struggling households. *Source: Scotsman, 5 February 2009.*

Abbey supplies one in four new UK mortgages

Abbey, Britain's second-biggest mortgage lender, claimed that it supplied more than one in four new home loans issued during 2008. The bank, owned by Spain's Santander, said it accounted for 28.9% of net mortgage lending during the year as rival lenders,

including Northern Rock, withdrew from the market. This was up from just 8% during 2007, with the bank accounting for 30.3% during net lending during the second half of 2008. Abbey also said that it opened 572,000 new accounts during the year as customers sought what they perceived to be a 'safe haven' during the financial crisis. *Source: Times, 5 February 2009.*

Northern Rock is to start lending again. Northern Rock will increase mortgage lending by up to £14 billion over the next two years in plans announced today. A new business strategy has been agreed that will see around £5 billion of new mortgage lending for 2009 and between £3 and £9 billion from 2010 onwards, subject to market demand. Please click [here](#) to access the HMT press release.

And also.....

The Banking Bill receives Royal Assent

The Banking Bill received Royal Assent on 12 February 2009 and as a result, the Banking Act 2009 has been published on the Office of Public Sector Information website. The Act is designed to provide remedies and assistance for banks that are facing financial difficulties. The Act has now entered into force. Please click [here](#) to access the legislation.

OFT respond to consultation response on EU proposals for a Consumer Rights Directive

OFT has responded to BERRs consultation on the proposals for a Consumer Rights Directive. The proposed Directive was published in draft on 8 October 2008. The aim is to bring together and update a number of existing Directives which form part of the Commission's body of work in consumer protection (the 'Consumer Acquis'). The Directives which are consolidated into the CRD include Doorstep selling 85/577/EEC, Unfair Contract Terms 93/13/EEC, Distance Selling 97/7/EC, Sale of Goods and Associated Guarantees 99/44/EC and is maximum harmonisation. Please click [here](#) to access the OFT response.



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OFT response to Consumer Remedies for Faulty Goods consultation

The OFT has published its response to the Law Commission's consultation on consumer remedies for faulty goods. Please click [here](#) to access the response document.

Regulatory Reform Committee inquiry in regulatory reform

On 10 February 2009 the Regulatory Reform Committee announced that it is to undertake an inquiry into themes and trends in regulatory reform. According to the accompanying press release, the Committee will consider how aspects of the regulatory reform agenda are evolving; possible improvements to the design of new regulations; and whether reform initiatives are currently achieving intended benefits. Source: *Regulatory Reform Committee*, [press release](#) 10 February 2009.

EC publishes a consultation document entitled "Financial Inclusion: Inclusion ensuring access to a basic bank account"

The European Commission has published a consultation on financial inclusion and the importance of ensuring that EU citizens have access to basic bank accounts. The EC state that cross-border access to basic bank accounts in the EU is restricted, at least to some extent since non-residents do not always have access to a bank account in another Member State. Please click [here](#) to access the consultation document.

Government launches consultation on dormant bank accounts

Government has launched a consultation stating its proposal on using secondary legislation to establish a UK dormant accounts scheme. Government hopes to introduce the secondary legislation in Parliament later this year. The consultation also places a requirement on building societies participating in the scheme for smaller institutions to publicly disclose information in line with the requirements placed on smaller banks by the Act. Please click [here](#) to access the consultation document.

FSA issue consultation to introduce an Information Gateway between the Financial Services Authority and the Claims Management Regulator

The FSA has issued a consultation on proposed changes to the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 to introduce an Information Gateway between the Financial Services Authority and the Claims Management Regulator. It is proposed in the consultation that this change would be implemented via the introduction of secondary legislation. The closing date for responses is 14 May 2009. Please click [here](#) to access the consultation document.

FSA expand enforcement arm

The FSA is to expand by more than a quarter its wholesale enforcement division. The strengthening of the enforcement arm reflects the pressure on the FSA to bring more big cases and demonstrate that it is tackling the systemic misconduct underlying the problems in the financial market. The director of enforcement, Margaret Cole, also said that the FSA would hire private practice barristers for big criminal cases. Source: *Financial Times*, 24 February 2009.

EC website dedicated to informing consumers about unfair practices

The European Commission runs a dedicated website to help and advise individual consumers who think that they may have been misled or fallen victim to a scam, or who want to find out which practices they need to watch out for. The address is <http://www.isitfair.eu/>. The site contains practical day-to-day examples of unfair practices and advice on how to get help. The site is available in 22 EU languages.

Treasury Committee to hold regional public meetings on financial crisis

As part of its inquiry into the banking crisis, the Treasury Committee will be making a series of regional visits to discuss the consequences of the financial crisis with members of the public. The first visit will be to Belfast on Monday 2 March. The meeting will be held in the Senate Chamber, Parliament Buildings, Stormont and will begin at 11.15am and last for up to 45 minutes. All meetings will be by ticket only. Please click [here](#) for more information.



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FSA to set up system to regulate bank bonuses

Reports are out that the FSA is working on a new way of policing bank bonuses that will change the way all financial institutions reward their staff, not only

those that have been privatised. The FSA will issue a consultation on a new regulatory framework in March. Please click [here](#) for more information.

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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