MONEY ADVICE TRUST

BUSINESS DEBTLINE | NATIONAL DEBTLINE | WISER ADVISER

Consultation Response:

HM Treasury Consumer Credit Act Reform-Phase 1

Response by the Money Advice Trust

Date: July 2025

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Introduction

About the Money Advice Trust

The Money Advice Trust is a charity founded in 1991 to help people across the UK tackle their debts and manage their money with confidence.

The Trust's main activities are giving advice, supporting advisers and improving the UK's money and debt environment.

In 2024, our National Debtline and Business Debtline advisers provided help to 203,700 people by phone, webchat and our digital advice tool with 2.8 million visits to our advice websites. In addition to these frontline services, our Wiseradviser service provides training to free-to-client advice organisations across the UK and in 2024 we delivered this free training to 750 organisations.

We use the intelligence and insight gained from these activities to improve the UK's money and debt environment by contributing to policy developments and public debate around these issues.

Find out more at www.moneyadvicetrust.org.

Public disclosure

Please note that we consent to public disclosure of this response.

Executive summary

We welcome the opportunity to respond to the HM Treasury consultation on phase one of the reforms to the Consumer Credit Act 1974 (CCA).

We do not agree with the vision for a reformed consumer credit regime as outlined in the paper. We believe that government overestimates both FCA powers and the practical action that the FCA can take to protect consumers under the consumer duty and its rule books.

We are very concerned that many of the consumer protections afforded by the CCA are likely to be lost and are particularly concerned with the pace of reform. We do not want to see reforms put in place without fully exploring how these will impact the most vulnerable consumers and without further evaluation of what could be substantial consumer detriment with fewer automatic and individual rights.

We feel there is a significant imbalance in the rights of parties in a credit agreement. We do not feel this imbalance is being fully taken into account in the proposals to remove the sanctions regime or to remove the criminal offences from the regime. Consumers are already at a disadvantage in relation to credit where something goes wrong. They do not have an equality of arms with their lender, as they are at a substantial disadvantage in their knowledge of consumer rights and may rely on both the CCA, the FCA, and the courts to protect them. In addition, they do not have the protection of the Financial Services Compensation Scheme for consumer credit agreements.

We do not want to see a regime that is put in place that does not work for vulnerable consumers. We would like to see further engagement by HM Treasury on the reforms with consumer groups, evidence gathering to include statistical information from HMCTS and lenders, and to slow down the general pace of reform.

We would prefer to limit reform to the introduction of the information changes initially, to allow these to bed in and be reviewed before moving on to reviewing individual rights and protections.

- ✓ We accept the case for updating and modernising some of the wording on the default notices and other notices, **but it is vital that these notices continue to have prescribed wording and a prescribed format with penalties** for improper use or for the failure to serve the notices at the correct time.
- ✓ We **strongly disagree with the conclusion that the FCA regime provides a sufficiently robust consumer protection regime without the sanctions** under the CCA. The FCA is unable to provide sufficient regulatory oversight to substitute for the consumer protections provided by the sanctions regime.
- ✓ We **support retaining all the criminal offences** in the CCA for the reasons set out in the paper. The offences act as a deterrent against particularly harmful practices.

- ✓ We do not agree that on balance the proposed reforms will mitigate the negative effects on those sharing particular protected characteristics. Some of the worst outcomes we see in debt advice are for people who have protected characteristics, and another characteristic that places them at greater risk of harm such as vulnerability.

We are very concerned that the government intends to examine each of the rights and protections under the CCA in a way that tends towards the presumption that each individual protection should be removed. We see a strong current of thinking that favours business claims that consumer protections are "red tape" and stifle innovation and growth. As debt charities, and consumer groups, we appear to be in a position where we have to defend each provision. We do not want to find that the pendulum swings back again in a few years, once consumer protections have been removed, in favour of stronger regulation once again.

Strong consumer protections give people a reliable and strong foundation to have the confidence to buy products and services and take out credit. These contribute to growth and wellbeing in society. We are not convinced that the proposed consumer credit regime will provide the required level of consumer protection in its current form.

Responses to individual questions

Question 1: Do you agree with our vision for a reformed regime?

We do not agree with the vision for a reformed consumer credit regime as outlined in the paper. We believe that government overestimates both FCA powers and the practical action that the FCA can take to protect consumers in real time under the consumer duty and its rule books.

As the paper states at 2.5: *"The Government has engaged with stakeholders and understands that while they feel there are some issues with the CCA, they are broadly supportive of the consumer protection it provides".*

This is not compatible with the conclusion that: *"HMT will ensure that its approach to reform delivers robust consumer protection, even if there is a shift away from the CCA's model of regulation to a more principles, outcomes-based regime under the FCA"*.

As we have said before, in our view, the FCA's rules and the consumer duty are not a substitute for these rights and protections. Whilst we fully support the consumer duty, it does not provide a remedy for an individual faced, for example, with a court claim for repossession of their house or car. The FCA may decide to take supervision or enforcement action against a firm they feel has acted unfairly, but this will be after a series of complaints or concerns raised by individuals or consumer bodies, and will only deal with harms retrospectively.

The same applies to the individual right to complain to the Financial Ombudsman Service (FOS) which may result in a complaint being upheld plus an element of compensation paid out, but this can be many months after the event. A complaint to FOS cannot provide a remedy in court at a repossession hearing.

Question 2: Do you agree with our preferred approach to legislation?

We would prefer to limit reform to the introduction of the information changes initially, to allow these to bed in and be reviewed before moving on to reviewing individual rights and protections.

We agree that it makes sense to proceed with one legislative vehicle to cover both phases one and two of the consultation process. However, we are very concerned with the pace of reform. We do not want to see reforms put in place without fully exploring how these will impact the most vulnerable consumers.

It should still be possible to introduce rules and guidance at a gradual pace so that the impact of new rules can be assessed and their effects evaluated, before moving on to the next area of reform. We would like to see further engagement with consumer groups and research with consumers before the legislation is put in place.

Question 3: Do you think the challenges in relation to the transitional provisions have been captured and what further thoughts do you have on possible appropriate transitional provisions?

We have some points to add to the transitional provisions as set out in the paper. It is important that transitional protections do not remove the rights and protections of consumers in relation to agreements taken out before the new rules come into force.

It is also important that CCA provisions should be retained during the transitional period for those agreements, and not removed until it is clearly safe to do so, and that there will be no adverse effect on consumer rights.

Question 4: Do you agree with our proposal to repeal the information provisions from the legislation and for these to be recast as appropriate into FCA rules?

We believe that it is vital that consumer credit agreements and contractual notices should continue to contain prescribed wording and a prescribed format. We are concerned that the proposals to repeal the CCA provisions on credit agreements will mean there is no longer a recognisable prescribed format for credit agreements. **We very much hope the FCA will remedy this in its rules.**

We accept the case for updating and modernising some of the wording on the default notices and other notices, **but it is vital that these notices continue to have prescribed wording and a prescribed format** with penalties for improper use or for the failure to serve the notices at the correct time.

We do not accept the argument that it is generally burdensome for firms to comply with the information requirements. As the notices and forms are generally prescribed in terms and format, then compliance should be straightforward to achieve. We also hear from smaller lender trade bodies that their members like to have clarity and a firm set of rules and prescribed notices that they can be confident are compliant. They do not want to run risks and do not want to innovate with their notices and communications.

Whilst we very much support the implementation of the consumer duty by the FCA, **we do not agree that the consumer understanding outcome will be a substitute for the need for prescription in CCA information requirements**. The consumer duty can only advance the consumer protection objective if properly supervised and enforced by the FCA. We believe that a reformed authorisations process and robust supervision and enforcement regimes under the FCA will be crucial to the success of the consumer duty measures. However, this is not under consideration. Therefore, the FCA regime will not be in a position to replace rights under an individual credit agreement.

The CCA information requirements contain penalties for improper use or the failure to serve the notices at the correct time. The consumer duty does not have any element of automatic penalties for any failures by firms to abide by FCA rules and does not have the same effect as CCA protections. There is no element of consumer redress and no court protection for individual consumer credit agreements under the consumer duty.

We would caution against providing lenders more flexibility in this area. In our experience, there are risks in relaxing the provisions on mandatory requirements and prescription.

Moving away from prescription on the belief that all lenders in the market will behave well and follow best practice is a significant risk, and one we think the government should not take. We cannot develop a legislative model that only recognises the best type of creditor behaviour and intentions instead of taking a precautionary approach to protect consumers against the worst lender practices.

There is a significant risk that high-cost lenders on the margins of the market and who may be less reputable will be tempted to use misleading and obscure language to confuse vulnerable consumers. Key terms may be hidden in the small print, and consumers could find themselves with onerous and unfair credit agreements and be confused as to their rights when further information notices are sent to them.

We believe that there is also a high risk relating to consumer understanding if firms are not required to use prescribed forms. Innovation by one firm who likes to send a "friendly reminder" notice by text message compared to another who has emailed a "final notice" means that it would be impossible to identify when a consumer has received a legally binding notice that allows the lender to take court action to recover the debt. It would also make it very difficult to give advice without common terminology and prescribed notices.

Although some terms could be simplified, it is vital that everyone uses the same terminology to avoid complexity and the potential for substantial confusion. We will be unable to provide expert and comprehensive advice if we cannot identify the type of credit a client has, or what the legal consequences are of having that type of credit. Scrapping the terminology in the CCA will not result in improved consumer financial education and understanding.

We are pleased to see the recognition in the "stakeholder feedback" that the FCA will consider replicating the FCA information sheets in their rules, due to consumer groups raising concerns. These information sheets have been devised with the advice sector to be easy to understand. **It is vital that these are retained and that lenders are required to send these notices to customers under the FCA rules**, once the provisions in the CCA are repealed.

In our response to question 5 we set out why a sanctions regime should be retained. This means that certain information requirements will need to remain in the CCA, because of the sanctions attached to these, even if their form and content is subject to FCA rules.

Question 5: Do you agree with our conclusion that the FCA regime without sanctions provides a robust consumer protection?

We are very disappointed to see that HM Treasury have decided that sanctions are not required. This contradicts the conclusion that the FCA came to in the Retained Provisions Report where the FCA concluded that sanctions should be retained. We strongly disagree with the conclusion that the FCA regime provides a sufficiently robust consumer protection regime without the sanctions under the CCA. The FCA is unable to provide sufficient regulatory oversight to substitute for the consumer protections provided by the sanctions regime.

We agree that the FCA has a broad range of supervisory and enforcement powers. However, these act retrospectively and do not protect individual consumers automatically or provide redress to individuals. As the paper recognises at point 5.4:

"By holding firms accountable and enforcing regulations, the FCA aims to prevent misconduct and ensure that financial markets function effectively and fairly. However, the FCA has finite resources and notwithstanding these powers it does not follow that the FCA will be able to identify each breach or failing by every firm all the time."

Whilst we appreciate that the OFT supervisory and enforcement powers were more limited, the greater powers of the FCA do not translate into the ability of the FCA to identify every breach by all firms or take action as required. To replicate the scope of the sanctions regime would require much wider supervision and enforcement activities by the FCA. Although FOS provides important consumer complaint protections, it cannot replicate the automatic nature of the sanctions regime and the deterrent effect of these sanctions. Surely an automatic sanctions regime acts to alleviate the pressure on the FOS and the number of complaints it would receive, as it already has a lengthy wait for decisions.

It is vital to remember that the additional sanctions brought in by the Consumer Credit Act 2006, were brought in as a response to poor practice by lenders who were not consistently providing statements, information on interest charged or arrears and termination notices to individuals. We would routinely give advice for example on catalogue firm debts which did not appear to have been subject to a proper CCA agreement in writing, and no information on arrears and interest accruing was being provided.

In addition, the sanctions will generally only impact lenders who fail to send the correct notices and information required at the time these are required. Once the failure has been remedied, the sanctions no longer apply. We fail to see the argument for firms to be allowed to make substantive errors without consequence here. We would argue that the incentives are for firms to stop making administrative or technical errors due to the sanctions, as these are entirely avoidable.

We do not agree with the conclusion that "*the evidence is currently insufficient to support the view that sanctions provide protections beyond that offered by the FOS, FCA regime or usual court process*".

As we have said before, the FCA handbook, CONC rules and FSMA principles are not able to provide the same protections for an individual with their own credit agreement in a court case. These might work well at the level of action taken against firms, but this is not the same as CCA sanctions that ensure that individual consumers can obtain appropriate redress in their particular case. The consumer duty requires firms to ensure good outcomes for consumers, but again, does not act on an individual basis. If the FCA was to suspect that a firm is breaching its consumer duty requirements, this would form part of broader supervision and enforcement action. Again, there would be no redress for that particular consumer in real time.

We are particularly concerned with the statements in the paper in section 5.25 on enforcement action by lenders in the County Court.

"Based on our discussions with some firms, HMT understands that many often do not take enforcement action in the courts against consumers in relation to unsecured debts, as often it is too costly or consumers do not have the means to be able to pay any judgment amount. In addition, where there is any non-compliance which results in consumer harm, firms are required to provide consumers with redress proactively in a timely manner under the FCA regime."

We have not seen any evidence provided that consumer credit lenders are not taking out county court claims for money owed on CCA regulated agreements. We appreciate that HMCTS may have limited statistical information regarding the types of creditors that are issuing claims, but would suggest that they should be able to give some clarity on this issue to HM Treasury. We recognise that it may be difficult to quantify money judgments by creditor sector e.g. CCA debt, parking penalty, telecoms or utility debt, as government changes to include the name of the claimant on the Register are not yet in place, but Registry Trust may be able to help with data trends.[1]

However, it seems extremely unlikely that lenders, or debt collection agencies acting on their behalf are not issuing a high number of county court claims for CCA regulated agreements or enforcing judgments once these have been obtained. Lenders and debt collection agencies and debt purchase companies that are collecting CCA regulated debts should be able to provide statistical information on their own cases and what county court action they took in relation to these. In practice, our clients frequently have to deal with county court claims, judgments, repossession claims for hire purchase goods, and repossession of property.

We very much disagree with the conclusion in the paper that firms do not take action in the County Court to recover unsecured credit agreements, and do not think this assumption should be taken as a justification for removing the sanctions regime.

[1] https://www.registry-trust.org.uk/blog/decoding-debt-unpacking-landscape-monetary-judgments/ https://www.registry-trust.org.uk/blog/better-data-could-support-better-regulation/

Question 6: What are your views on the following approaches for criminal offences? Officials would need to review these options in the context of the wider CCA Reform proposals.

(a) Repealing all the criminal offences in the CCA, allowing the FCA to take enforcement action where possible;
(b) Keeping all the criminal offences in the CCA;
(c) Repealing all criminal offences (allowing the FCA to take enforcement action where possible) except those that relate to minors and canvassing off trade premises where criminal offences would remain.

We support retaining all the criminal offences in the CCA for the reasons set out in the paper. The offences act as a deterrent against particularly harmful practices.

We think that abolishing criminal offences may well signal that the FCA is no longer taking the issues of canvassing off trade premises or sending circulars to minors as seriously. Overall, offences need to be retained, or an equivalent put in place that enhances rather than diminishes consumer protection.

As the paper says at point 6.4:

"…some (consumer groups) argue that the offences act as a deterrent against particularly harmful practice, especially offences against minors (s50 & s114(2)) and canvassing off trade premises (s49). Consumer groups argue that the lack of prosecutions demonstrates the deterrent effect."

It is difficult to prove a negative, as no one is in a position to confidently state that these offences did not have a protective element, and a "self-policing" effect on lenders and can therefore be removed. As we have said, we prefer to take a precautionary approach, given the potential for high-cost lenders on the margins of the market who may be less reputable, to take an innovative approach to the opportunities afforded by the removal of criminal sanctions. We note that illegal lending operations can also be blurring the rules on the margins of the market, and it would seem that decriminalisation would only serve to encourage this behaviour.

At the very least, we would argue that the criminal offences that relate to minors and canvassing off trade premises should remain, for this reason.

Question 7:
a: Has this paper captured the key issues and barriers for each of the cross-cutting themes of:

- Green Finance: [Yes/No]
- Islamic Finance: [Yes/No]
- Technology: [Yes/No]

We do not have the relevant expertise in these aspects of policy to respond to this question in detail.

We are particularly concerned that HMT should preserve protections such as section 75 on connected lender liability and section 140A on unfair relationships with regard to green finance products.

These products are likely to be increasingly vital going forward for the green agenda, and it is not fair for the risk of new technology problems and installation failure to lie solely with consumers. Consumer bodies report issues regarding mis-selling and misrepresentation of the benefits of new green products through brokers, rogue traders or traders leaving the market, poor quality installation and people not getting the products they pay for.

Consumers need to be able to take out this type of credit safely. This additional risk burden would be likely to disincentivise consumers from taking out products they may perceive as more risky, and undermine the government's own growth agenda. It is vital that consumers have the confidence to borrow, knowing that their rights are protected in the event that something goes wrong.

b: Is there anything else you think needs to be considered in our Phase 2 policy work?

We are very concerned that the government intends to examine each of the rights and protections under the CCA in a way that tends towards the presumption that each individual protection should be removed. We see a strong current of thinking that favours business claims that consumer protections are "red tape" and stifle innovation and growth. As debt charities, and consumer groups, we appear to be in a position where we have to defend each provision. We do not want to find that the pendulum swings back again in a few years, once consumer protections have been removed, in favour of stronger regulation once again. Strong consumer protections give people a reliable and strong foundation to have the confidence to buy products and services, and take out credit. This contributes to growth and wellbeing in society.

We are pleased to see that the government acknowledges at point 7.4:

"In particular, while the Phase 1 policy proposals have broadly involved the repeal of provisions, it is likely that a number of provisions considered later will have to remain in legislation in order to ensure consumers still have robust consumer protections".

We consider that the CCA provides key individual rights and protections, and that it is vital to retain provisions such as section 75 on connected liability, the unfair relationships and time orders provisions, and the hire purchase regime.

As we have said before, phase 2 of the reforms allows for an opportunity to strengthen and expand these provisions, such as looking again at whether section 75 needs to be revised to encompass new forms of payment. The hire purchase regime should be retained and extended to hire agreements.

Question 8: Do you agree with the provisional assessment that, on balance, the Government's proposed proportionate approach to reform mitigates the negative impacts on those sharing particular protected characteristics and retain the positive equalities impacts of the products?

We do not agree that on balance the proposed reforms will mitigate the negative effects on those sharing particular protected characteristics. As we have said before, some of the worst outcomes we see in debt advice are for people who have protected characteristics, and another characteristic that places them at greater risk of harm such as vulnerability.
In addition, people with mental or physical health conditions may find it harder to represent their own interests or to engage in certain processes. This can be the case for a wide range of reasons including, but not limited to, difficulties with comprehension, challenges communicating or utilising certain communications channels, energy levels, the effect of medication and the inaccessibility of certain processes or communication channels.

People with health conditions or disabilities are therefore more likely to need to rely on consumer protections and rights set out in the CCA. Any move to diminish this level of consumer protection could disproportionately impact upon these groups.

We believe that it is vital that provisions in the CCA are retained that give individual rights and protections. The automatic nature of the many of the provisions such as the unenforceability rules is also of vital importance in protecting vulnerable consumers who are more at risk of harm.

We believe that the sanctions reforms in particular will result in a reduction in consumer protections. It is vital that CCA protections, particularly the self-policing sanctions, or the equivalent, remain in place given the vulnerability of many using consumer credit products. There is little chance that vulnerable people in debt will be in a position to counterclaim for damages for a breach of statutory duty when taken to court by their lender.

We accept that moving the information requirements into FCA rules, if done with the correct degree of prescription and simple drafting, should result in better outcomes for consumer understanding.

Question 9: Do you have any further data you can provide on the potential impacts on persons sharing any of the protected characteristics?

We believe that it is vital that provisions in the CCA are retained that give individual rights and protections. The automatic nature of the many of the provisions such as the unenforceability rules is also of vital importance in protecting vulnerable consumers who are more at risk of harm.

We do not have a substantial amount of further data to share on the potential impacts, given the time available to do so.

Almost half (45%) of people we help at National Debtline have a health-based 'vulnerability' – i.e. something that makes it harder for them to manage their finances, or debt issues, including mental health conditions. We believe this is important in relation to the potential impacts on consumers in vulnerable circumstances as we have set out above.

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