



Adrian Dally  
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19 October 2006

Dear Adrian

**FOS Consultation Paper on Rules for the new Consumer Credit Jurisdiction**

FLA (Finance & Leasing Association), the principal representative of the asset, motor and consumer finance sector in the UK, would like to comment upon the draft rules for the consumer credit jurisdiction (“CCJ”) set out in your consultation paper of June. We apologise for the short delay in responding.

We broadly welcome the draft rules and the general approach set out in your consultation paper. We do, however, have some concerns set out below and hope that these can be addressed when preparing the final rules.

Before responding to the specific questions raised in your paper, we would like to comment on certain aspects of the scheme not touched on by the questions.



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## Trade Body Schemes

We are pleased to see your confirmation that trade bodies can continue to provide an “initial complaint handling function” in conjunction with the CCJ set out in section 226A of the Financial Services and Markets Act 2000: see paragraph 8.5 of your paper.

We are, however, a little confused by the language used in your description of how you envisage this working. Our concern here is about what appears to be the proposed requirement that the business concerned “makes it clear that the trade body is acting for [them]”. Our own scheme, described in the annex to this paper, is *impartial* and we would want this to be made clear in any material describing what it does and its relationship with FOS.

The reference to the provision by a trade body of the “initial complaint handling function” may also mislead. In our view, it is better to describe the relationship in a way which reflects your description of the two stage complaints-handling procedure noted in paragraph 4.16 of your paper. In other words, the rules should recognise that some holders of consumer credit licenses who belong to trade bodies which run complaints-handling schemes may operate a two stage complaints-handling procedure which might involve the initial handling of the complaint by the licensee whilst offering complainants the opportunity to refer their complaint to the trade body if dissatisfied with an initial offer to resolve the dispute.

## Skills and resources

We appreciate that FOS has had some experience of dealing with consumer credit complaints. We would, however, stress that it is of central importance that FOS should be appropriately and adequately resourced with highly trained and experienced staff, with specialised understanding of consumer credit. Whilst this may appear obvious, we remain concerned that workload pressures may lead to cases being handled by relatively inexperienced staff who may effectively set the tone for the future. We would therefore like continued reassurance that FOS will have in place a team with specialised knowledge of consumer credit, and not just staff who are moved over from dealing with banking or other similar complaints.



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## **Jurisdiction**

As DTI's Consultation Document on the Provision of Alternative Dispute Resolution for Disputes Arising Under the Consumer Credit Act 1974 recognised, disputes can arise where the consumer experiences detriment due to the action of a trader or credit broker who may benefit from a transaction. In our experience, consumer credit disputes frequently involve the lender, its customer and a third-party, such as a car dealer acting as a credit broker. We therefore believe that it is right that the CCJ extend to activities carried on by these other parties, particularly when acting in an ancillary capacity.

As drafted the rules would provide that the CCJ extend to the consideration of complaints not covered by the compulsory jurisdiction and which relates to an act or omission by a licensee in the carrying on of one or more of the following activities: consumer credit activities; or activities ancillary to them: see DISP2.6.8A. We believe that ancillary activities should include the supply by a licensee of goods and/or services for the purposes of a transaction which is to be financed under a regulated consumer credit agreement in respect of which the licensee has acted as a credit broker.

## **Unmeritorious complaints**

FLA members are concerned that there will be an increase in the number of frivolous complaints made against them under the CCJ. In relation to this, the FOS must make full use of provisions to reject unmeritorious complaints (DISP 3.3.1 etc) and ensure that lenders do not incur unnecessary costs when responding to such claims.

## **Dismissal without consideration of the merits**

We note that FOS is able to dismiss a complaint early in the procedure without consideration of the merits. The specified circumstances when this might be done are set out in pages 17 and 18 of the consultation paper. Whilst many of the circumstances listed seem entirely sensible, we are concerned that procedural and consequential difficulties might arise if FOS intends to dismiss a complaint early under either paragraph (i) or (j). We can easily imagine that there is the possibility of to-ing and fro-ing between FOS and a court, arbitrator or other



complaints handling scheme in such circumstances. When court proceedings are launched regarding a consumer credit complaint, there must be the realistic possibility in the future that a court might want to refer the matter to FOS for resolution. Would FOS reject such as reference on the basis that the complaint is the subject of current proceeding? What happens then? Our preference, at this stage, is for the proceedings to remain with the court, but we are unclear about the process by which this would be decided. Similarly, what happens when a court prefers, for reasons of proportionality, for example, not to deal with a case that has been dismissed, and referred to it, by FOS? Who decides which dispute resolution service has the carriage of the matter and what is the mechanism for making such a decision?

### **Consultation Questions**

Our responses to the questions specifically raised by your paper are set out below:

***Q1 Do you agree that the ombudsman service's compulsory jurisdiction (over FSA-regulated businesses) should be extended to include those consumer credit activities that are currently excluded – so that all complaints against FSA-regulated businesses can be handled under the compulsory jurisdiction, rather than be split between the compulsory jurisdiction and the consumer credit jurisdiction?***

We agree.

***Q2 Do you agree that it will be simpler for both businesses and consumers if the rules for the new consumer credit jurisdiction (eg on time limits and procedure) mirror, so far as possible, the current rules for the existing compulsory jurisdiction and voluntary jurisdiction?***

We agree, for the reasons set out above.

***Q3 Do you agree that the limitations on eligible complainants in the Consumer Credit Act should apply only to complaints against businesses covered by the CCJ?***



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We agree.

***Q4 Do you agree that the rules on recording and reporting of complaints should not be applied to businesses covered by the CCJ?***

We agree, for the reasons set out in your paper.

We would also emphasise that it is of crucial importance that FOS remains and is seen to remain independent of the regulators. As the then Financial Secretary, Ruth Kelly MP, said in her Statement on the Two Year Review of Financial and Services Markets, “The importance of the Ombudsman in the regulatory structure is such that any changes should only be made after careful consideration and consultation. In particular, I would not favour any changes which undermined the independence of the Ombudsman: *it is only a credible alternative to the courts if it is independent of the regulator*, of the financial services industry and of consumers.” [Our emphasis added].

***Q5 Do you agree that the Financial Ombudsman Service should have the power to dispense with or modify the application of the complaint handling rules where this would be unduly burdensome or would not achieve the purpose for which they were made?***

Yes.

***Q6 Do you agree that the most appropriate funding arrangement would be a combination of a flat-rate five-yearly levy of around £150 per firm and a case fee of around £405 to £480, depending on the number of “free” cases offered?***

We broadly agree with the proposed approach to funding, subject to our response below to Q7 on case fees.

Whilst we have been supportive of the policy underlying the creation of the CCJ, we remain concerned about the cost of FOS. If FOS is to provide a cost effective service in this area, it should apply a charging structure sympathetic to the business of our membership and must bear in mind that current complaint resolution costs are incorporated into the FLA’s membership fee.



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We also believe that the costing structure should reflect that fact that many of the disputes may involve an amount of not much more than the case levy fee currently in place.

***Q7 Would you in theory favour two "free" cases per business per year and a case fee of around £405 for any additional cases, or five "free" cases per business per year and a case fee of around £480 for any additional cases?***

Our preferred approach is one which keeps the case fee as low as possible. If the economics are such that it is cheaper to spread the costs of case handling across all cases that are handled by FOS, (and so dispense with the "free" case initiative) then that would be our preferred option.

Incidentally, we are not clear about the point at which a case fee would become payable and would welcome clarification of the point.

***Q8 Do you have any information on likely numbers of complaints under the CCJ and how they will be distributed amongst businesses of different types and sizes?***

It is, of course, very difficult to predict the number of complaints that will be made under the CCJ.

From our own perspective, the number of complaints handled by FLA under our Lending Code remains extremely low in comparison to the number of credit agreements written by FLA members. The total number of consumer complaints seen by FLA in 2005 was 1060. Of these, 859 complaints were referred to the FLA member for investigation under the complaint conciliation scheme. In the other 201 cases either the complainant has chosen not to pursue the complaint any further, or the complaint has been resolved without the need for FLA conciliation.

More detail is given in our Lending Code Group's Annual Report for 2005, a copy of which is attached.

It is hard to say how much to read into these figures and how far they can be used as a model to forecast the number of future cases under the CCJ. We are,



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however, happy to share our experience with you further and look forward to meeting FOS representatives to explain in greater detail how our complaints system works and the information we hold on complaints.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ashley Holmes', with a horizontal line extending to the left and another to the right.

Ashley Holmes

*Head of Legal Affairs & Policy Development*



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## ANNEX

### Consumer Complaints and the Lending Code

FLA members currently make use of our conciliation and arbitration schemes in order to resolve disputes relating to consumer credit. Although our rules allow members of the Financial Ombudsman Service (“FOS”) to opt out of our scheme, none have done so. A number of members do make use of both schemes.

Our conciliation scheme offers complainants the opportunity for conciliation on all aspects of their consumer credit relationship covered by the Lending Code, which is binding on full members who lend to consumers.

When we receive a consumer complaint, it is, with the authorisation of the complainant, referred to the CEO of the member company. The company must investigate and respond to the complaint within 21 days. If the response to this is not satisfactory to the customer, FLA will continue to conciliate. Over half of all cases are closed on this basis within 60 days. If the matter reaches deadlock, the customer may choose to make use of the FLA’s independent arbitration scheme (run by the Chartered Institute of Arbitrators), although only a handful of complainants do so. There are certain exclusions from this scheme. Traditional extortionate credit complaints, for example, which have not been resolved by way of conciliation, would not be dealt with by arbitration. The schemes are free to the consumer and the cost to our member is incorporated within the FLA’s membership fee.



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