

Irresponsible lending

– OFT guidance for creditors

An OFT consultation

July 2009

OFT1107con

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Scope of this consultation

Scope of this consultation	This consultation is focused on irresponsible lending practices for the purposes of section 25(2B) of the Consumer Credit Act 1974.
Geographical scope	UK- wide.
Impact assessment	There is no impact assessment linked to this consultation. The OFT does not conduct impact assessments when producing explanatory guidance. We work closely with stakeholders in preparing guidance and consult fully on the content.

Basic information

To	This consultation is aimed at those with an interest in any stage of the lending process as conducted by consumer credit businesses. This includes large and small businesses, trade associations, professional bodies, regulators, enforcement agencies, consumer organisations and borrower groups.
Duration	The consultation will run from 30 July 2009 to 21 October 2009.
Enquiries	By telephone: Alison Watson on 020 7211 5859. By email to: alison.watson@oft.gsi.gov.uk By fax to: 020 7211 8604. By post to: Alison Watson, Credit Policy and Special Projects Team, Office of Fair Trading, Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JX.

<p>How to respond</p>	<p>We would welcome your comments on the content of this draft guidance document. Please respond to as many questions as you are able and provide any suggested changes or comments on the draft in writing (by email, or alternatively by letter or fax, as indicated above).</p> <p>We appreciate that respondents may have diverse opinions as to whether certain practices should or should not be included in the guidance. Any evidence that you are able to supply in support of any changes that you propose is likely to add weight to our consideration.</p> <p>When responding to this consultation, please state whether you are responding as an individual or whether you are representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were collated.</p> <p>We are publishing this consultation on the OFT website and sending it to a range of stakeholders to invite comments.</p>
<p>Additional ways to become involved</p>	<p>If you wish to meet with the OFT team involved please contact Alison Watson (details given above).</p>
<p>After the consultation</p>	<p>After the consultation we will publish our final guidance as well as a summary of responses received. Both documents will be available on our website at www.of.gov.uk/publications.</p>
<p>Compliance with the <i>Code of Practice on Consultation</i></p>	<p>This consultation complies with BRE's Code of Practice on Consultation. A list of the key criteria can be found at Annexe C along with a link to the full document.</p>

Background

Purpose of this guidance

Amongst the reforms introduced by the Consumer Credit Act 2006, was the inclusion of new provision section 25 (2B) of the Consumer Credit Act 1974. This made clear that included amongst the business practices which the OFT may consider to be deceitful or oppressive or otherwise unfair or improper, for the purposes of considering fitness to hold a consumer credit licence ('the section 25 test'), are practices in the carrying on of a consumer credit business that appear to the OFT to involve irresponsible lending. The purpose in producing this guidance is to provide greater clarity for businesses and consumer representatives as to the business practices that the OFT considers constitute irresponsible lending practices.

Although the guidance is intended to cover business practices at each stage of the lending process that constitute 'irresponsible lending practices', it is not intended that it should cover **all unfair practices** (for the purposes of the section 25 test) that might occur at any stage in the process if, in the OFT's view, such practices do not constitute irresponsible lending practices.

The OFT has produced – and continues to produce – other guidance which gives our views on unfair practices more generally (for example OFT 969 Consumer Credit Licensing – General guidance for licensees and applicants on fitness and requirements). The OFT issued Non-Status Lending Guidelines in July 1997 (updated in November 1997) and has subsequently published guidance for businesses engaged in second charge lending, in July 2009, which now supersedes those Guidelines.

	<p>It is part of the OFT's regulatory approach to seek to educate consumers through the provision of appropriate consumer guidance¹ and we will continue to address issues relating to 'irresponsible borrowing' in this context. However, in the OFT's view, the extent to which irresponsible borrowing is made possible in many (although not all) instances may, at least to some degree, be directly related to the effectiveness or otherwise of a creditor's business policies and procedures in respect of such matters as, for example, assessing affordability including ability to repay. This includes its procedures for considering the integrity of information supplied by potential borrowers which may, in part, inform such assessments.</p> <p>There can be no doubt that too much credit has been provided to some borrowers, allowing for unsustainable levels of borrowing and contributing to consequential problem indebtedness.</p> <p>The position that we are adopting in this guidance document seeks to balance the need to ensure that consumers are protected from irresponsible lending practices against the need to ensure that the supply of sustainable credit, particularly to those most in need, is not unduly inhibited. We are taking account of the current economic downturn and may revise our position on certain aspects of the guidance, in the future, in light of subsequent changes in the general economic climate.</p>
<p>Previous engagement</p>	<p>The OFT launched a consultation on the scope of the guidance on 1 August 2008 and, on the basis of that consultation, determined that the guidance should cover each stage of the lending process (the so called 'wider scope') from the pre-contract stage of advertising and</p>

¹ www.consumerdirect.gov.uk/before_you_buy/money_and_credit/key-questions/

marketing through to a consideration of post-contract issues such as the handling of arrears and default.

We have subsequently held workshops in England, Scotland, Wales and Northern Ireland, some for businesses and others for consumer groups, and engaged in a number of bi-laterals with business and consumer representatives to seek their views on the substance and form of the guidance.

We are grateful to all the stakeholder representatives with whom we have consulted during the production of this draft guidance for taking the time to provide us with their views.

Feedback about this consultation

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

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A copy of the key criteria from the Better Regulation Executive's *Code of Practice on Consultation* can be found in Annexe C.

Data use statement for responses

Personal data received in the course of this consultation will be processed in accordance with the Data Protection Act 1998. All information received (including personal data) is subject to Part 9 of the Enterprise Act 2002. We may choose to refer to comments received in response to this consultation in future publications. In deciding whether to do so, we will have regard to the need for excluding from publication, as far as that is practicable, any information relating to the private affairs of an individual or any commercial information relating to a business which, if published, would or might, in our opinion, significantly harm the individual's interests, or, as the case may be, the legitimate business interests of that business. If you consider that your response contains such information, that information should be marked 'confidential information' and an explanation given as to why you consider it is confidential.

Please note that Information provided in response to this consultation, including personal information, may be the subject of requests from the public for information under the Freedom of Information Act 2000 (FOIA). In considering such requests for information we will take full account of any reasons provided by respondents in support of confidentiality, the Data Protection Act 1998 and our obligations under Part 9 of the Enterprise Act 2002.

If you are replying by email, these provisions override any standard confidentiality disclaimer that is generated by your organisation's IT system.

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THE CONSULTATION

We are consulting with the aim of producing clear guidance on the test for irresponsible lending for the purposes of section 25(2B) of the Consumer Credit Act 1974. The subsequent guidance will outline the types of deceitful or oppressive or otherwise unfair or improper business practices which, if employed by a consumer credit business, would call into consideration its fitness to hold a consumer credit licence.

Whilst this guidance represents the OFT's view on irresponsible lending, it is not meant to represent an exhaustive list of behaviours and practices which might constitute irresponsible lending.

The guidance includes distinct chapters covering different stages in the lending process.

The purpose of this consultation is to obtain feedback on the content and how it is presented. At the end of each chapter we have asked a series of questions, a summary of which can be found at Annexe A. Details of how to respond to the consultation can be found at the front of this document.

This guidance is being produced at a time of some uncertainty in the regulatory landscape in the short to medium term. Government is currently consulting on implementing regulations for the Consumer Credit Directive and the Department for Business Innovation and Skills (BIS) Consumer White Paper has recently announced a series of proposals including reviews of markets and/or practices within markets. The FSA is also publishing its Mortgage Market Review Discussion Paper (MMR) in the autumn – and we will have regard to the MMR when finalising our guidance. Given the somewhat fluid environment in which our guidance is being produced, we are committing to review its content within 6 months of publication in order to make any necessary/appropriate amendments.

We will also be undertaking a subsequent review to assess business compliance and the effectiveness of the guidance. Respondents to this consultation may wish to propose what they consider might be an appropriate time period,

following the publication of our irresponsible lending guidance, for the OFT to initiate such a compliance review.

Next steps

The consultation closes on 21 October 2009. We will continue to liaise with stakeholders during the consultation period and we will publish our guidance, together with a summary of the responses that we receive, on our website at <http://www.offt.gov.uk/publications>.

1 INTRODUCTION

The 'fitness' test

- 1.1 Most agreements involving the provision of credit to consumers are regulated under the Consumer Credit Act 1974 (the Act).² The Act and its subordinate legislation provide a framework to protect consumers when dealing with those engaged in consumer credit businesses and ancillary credit businesses.
- 1.2 All consumer credit businesses (creditors)³ are required to hold an appropriate standard consumer credit licence⁴ issued by the Office of Fair Trading (OFT).⁵ The OFT has a duty under section 25 of the Act to take steps to ensure that licences are only given to – and retained by – those who are fit to hold them (the section 25 test).
- 1.3 The Act provides that amongst the business practices which the OFT may consider to be deceitful or oppressive or otherwise unfair or improper, for the purposes of the section 25 test, are practices in the

² See section 16 of the Act covering 'exempt agreements'. This guidance extends to unregulated or exempt consumer credit agreements (other than 1st charge mortgages regulated by the FSA).

³ References to 'creditors' and 'consumer credit businesses', throughout this guidance document, are also generally applicable to their employees, agents or associates, including intermediaries, acting on their behalf.

⁴ The licence should cover Category A – 'consumer credit business'. As defined in section 189 of the Consumer Credit Act 1974, 'consumer credit business' means any business being carried on by a person so far as it comprises or relates to the provision of credit by him, or otherwise his being a creditor, under regulated consumer credit agreements. 'Creditor' means the person providing credit under a consumer credit agreement or the person to whom his rights and duties under the agreement have passed by assignment or operation of law, and in relation to a prospective consumer credit agreement, includes the prospective creditor.

⁵ Unless covered by an appropriate group licence.

carrying on of a consumer credit business that appear to the OFT to involve irresponsible lending.

Scope of the guidance

- 1.4 The OFT launched a consultation on the scope of its irresponsible lending guidance on 1 August 2008⁶ and, on the basis of that consultation, determined that this guidance should cover each stage of the lending process from the pre-contractual stage of advertising and marketing through to a consideration of issues such as the handling of arrears and default.⁷
- 1.5 Although the guidance is intended to cover business practices at each stage of the lending process that constitute 'irresponsible lending practices', it is not intended that it should cover all unfair or unlawful practices (for the purposes of the section 25 test) that might occur at any stage in the process if, in the OFT's view, such practices do not constitute irresponsible lending practices.
- 1.6 Whether or not a particular practice might be considered to constitute an irresponsible lending practice may depend, in part, on the context in which the practice is engaged in, taking into account other related or linked practices. As stated in the OFT's published summary of responses to its consultation on the scope of its irresponsible lending project, some business models might incorporate irresponsible lending practices that do not lend themselves to being simply 'segmented' into constituent elements but might rather form parts of a continuum of bad practice. Consequently, the extent to which certain practices might be considered

⁶ www.oft.gov.uk/news/press/2008/91-08

⁷ www.oft.gov.uk/news/press/2008/147-08

to constitute irresponsible lending practices may depend, to some degree, on individual circumstances⁸ and/or individual business models.

The guidance and compliance

- 1.7 This guidance document constitutes the OFT's view on business practices that involve irresponsible lending. It should be read in conjunction with other OFT guidance, including *Consumer Credit Licensing – General guidance for licensees and applicants on fitness and requirements*⁹ (OFT969), and *Second charge lending – OFT guidance for brokers and lenders* (OFT1105).¹⁰
- 1.8 The guidance is not intended to be an exhaustive list of all possible behaviours which might constitute irresponsible lending. In a fast changing and developing market any such list would soon become out of date. Consequently, the guidance aims to cover the key principles and types of behaviour that are most relevant to a consideration of whether a creditor may be engaged in irresponsible lending, supplemented with some illustrative examples and explanation. **The OFT expects all consumer credit businesses to fully comply with both the word and spirit of this guidance.**
- 1.9 Where the OFT finds evidence of non-compliance, it will consider using the most appropriate, effective and proportionate enforcement option at its disposal to address the identified misconduct.¹¹ The type of OFT action taken will be guided by the level of actual or potential harm to the borrower and by the scale or frequency of identified breaches of the guidance.

⁸ The OFT always takes account of all relevant circumstances when considering taking any enforcement action.

⁹ www.of.gov.uk/shared_of/business_leaflets/credit_licences/of969.pdf

¹⁰ www.of.gov.uk/news/press/2009/13-09

¹¹ See Chapter 8.

1.10 The guidance will also provide a basis for assessing whether creditors have the appropriate skills, knowledge, experience, business practices and procedures, to be licensed by the OFT to operate a consumer credit business (the 'competence assessment').

Q1 Does the introductory chapter set out the OFT's general view on the scope of what might constitute irresponsible lending practices, and the legal test for irresponsible lending, sufficiently clearly?

Q2 Are there any substantive aspects with which you disagree?

Q3 Do you consider that there are any significant omissions?

Q4 Do you have any other suggestions for improvement?

2 GENERAL PRINCIPLES OF LENDING

2.1 It is the OFT's view that there are a number of overarching principles of consumer protection and fair business practice which apply to all lending. There is, therefore, a responsibility on all creditors to ensure that their business practices and procedures are sufficient, and are given effect to in such a way, to ensure that the following principles are adhered to in practice. These principles should be considered as general statements on the conduct expected of creditors.

Creditors should employ the use of appropriate business practices and procedures

2.2 The OFT would expect creditors to:

- fully consider the suitability of credit products based on the borrower's needs and taking account of his circumstances
- assess a prospective borrower's ability to meet repayments over the life of a loan in a sustainable manner, taking into account the impact of the loan on the borrower's overall financial well-being
- actively encourage borrowers to seek independent advice, signposting appropriate sources
- regularly monitor credit agreements and notify borrowers who are – or appear as if they may be – in difficulty, and

- take appropriate responsibility for any acts or omissions of brokers,¹² debt recovery businesses (DRBs)¹³ and other intermediaries or agents who act on their behalf.

2.3 Creditors should not encourage borrowers to increase, aggregate or roll over existing debt when borrowers may face difficulties clearing their debts.

There should be transparency in dealings between creditors and borrowers

2.4 All information or documentation directed at – or provided to – borrowers should be clear, accurate and balanced, compliant with relevant legislative requirements, written in plain and intelligible language and should not be in any way misleading.¹⁴

2.5 The OFT would expect creditors to:

¹² A broker may be a business associate and/or agent of a creditor if the broker is tied to the creditor, or has an ongoing relationship with the creditor, or frequently does business with the creditor. This will be a matter of fact and degree. Similarly, the OFT considers third party debt collection businesses that recover debts on behalf of creditors may be business associates and/or agents of the creditors on whose behalf they act. Creditors should take reasonable steps to ensure that such persons do not engage in unfair business practices or act unlawfully. The OFT considers that actions of such third parties can jeopardise the creditor's fitness to hold a consumer credit licence as well as their own.

¹³ DRBs to whom creditors have assigned debts may themselves become the 'creditor' under the agreement.

¹⁴ This would include, but not be limited to, all advertising and marketing materials, websites and pre- and post-contract information. This principle applies to documents and information provided throughout the credit cycle and regardless of whether it is directed at new potential borrowers or existing customers. The OFT would not consider that the requirement to employ the use of 'plain and intelligible language' would be met by documents or information that contain overly technical language, legal jargon, Latin phrases, unclear abbreviations or information that is unclear and/or incomprehensible to the average borrower.

- ensure warnings and caveats are given 'equal prominence' as to any benefits and or incentives, such that they are equally likely to be seen by the borrower and to have an impact
- provide early disclosure of key contract terms and conditions, including rates and charges
- ensure all contract terms and conditions¹⁵ are fair and clear so as to be easily understandable by the borrower and are not unfairly balanced¹⁶ in favour of the creditor, and
- provide explanations of key aspects of credit agreements which are adequate to enable the borrower to assess affordability and understand associated risks and his principal rights and obligations.

There should be proportionality in dealings between creditors and borrowers

- Borrowers should be treated with consideration and forbearance.¹⁷

¹⁵ The OFT expects all pre-contract and contract documentation to comply with all relevant legislative requirements including the Consumer Credit (Agreements) Regulations 2004 (as amended) and the Consumer Credit (Disclosure of Information) Regulations 2004 (applicable to non-distance sales) and the Financial Services (Distance Marketing) Regulations 2004 (applicable to distance sales).

¹⁶ Contract terms should not be unfairly balanced in favour of the creditor to the potential detriment of the borrower within the meaning of the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs) The regulations can be found at: www.opsi.gov.uk/si/si1999/19992083.htm

¹⁷ The OFT's *Debt Collection Guidance (OFT 664)* and *Debt Management Guidance (OFT 336)* set out types of behaviour that the OFT considers fall within the category of unfair business practices which will call into consideration fitness to retain or be given a licence. It is expected that creditors, when handling default and arrears, will abide by both the word and spirit of both of these guidance documents to the extent that they are applicable.

www.offt.gov.uk/shared_offt/business_leaflets/consumer_credit/oft664.pdf

- Actions taken in respect of arrears or default should always be fair and proportionate and proper consideration should be given to all available options.
- Possession of a borrower's home should only be used as a last resort, having regard to the best interests and circumstances of the individual borrower.

Creditors should not treat borrowers unfairly

2.6 The OFT would expect creditors not to:

- target specific groups of borrowers¹⁸ with credit products that are likely to be inappropriate for members of such groups
- use high pressure selling techniques or inappropriate inducements
- use aggressive or oppressive behaviour or inappropriate coercion, or
- act in any way which is deceitful, oppressive, unfair or improper, whether unlawful or not.

Q5 Are the draft guidelines on the general principles of lending sufficiently clear?

Q6 Are there any substantive aspects with which you disagree?

Q7 Are there any significant omissions?

Q8 Do you have any other suggestions for improvement to this section?

www.oft.gov.uk/shared_of/business_leaflets/credit_licences/oft366.pdf

¹⁸ Borrowers who may be particularly vulnerable by virtue of their current indebtedness, poor credit history, or by reason of age or health, or disability, or for any other reason, should, in particular, not be exploited.

3 EXPLANATIONS OF CREDIT PRODUCTS

- 3.1 There should be transparency in all dealings with potential and actual borrowers, with early disclosure of key contract terms and conditions (including rates and charges), and explanations of key aspects of credit agreements provided which are adequate to enable the borrower to assess whether he can afford the credit commitment and to understand the associated risks and his principal rights and obligations.
- 3.2 The contents of paragraphs 3.3 to 3.20 inclusive should be considered as general statements on the conduct the OFT expects of creditors with regards to the provision of explanations of credit products.

Clear and understandable product explanations

- 3.3 A creditor should proactively provide a borrower with a sufficiently clear and detailed explanation to enable the borrower to assess whether a proposed credit agreement is suited to his needs and financial circumstances. In particular, whether it is affordable having regard to the impact on the borrower's financial circumstances.¹⁹
- 3.4 The explanation should be provided in good time, prior to the borrower entering into the credit agreement.
- 3.5 The OFT would not consider an explanation to be 'adequate' where the creditor had reasonable grounds to suspect that the borrower did not understand the explanation or material aspects of the explanation. The creditor should provide further explanation where he has reasonable grounds to suspect that the borrower does not understand a key aspect of the credit agreement and/or the pre-contract information.

¹⁹ It is the OFT's understanding that the legal requirement to provide adequate explanations, following the implementation into UK law of Article 5.6 of the Consumer Credit Directive in 2010, will not apply to regulated agreements under which the creditor provides the borrower with credit exceeding £100,000.

- 3.6 The nature and extent of the explanation required in any individual circumstance will depend in part on a number of factors including:
- the nature of the credit. The features of different types of credit product may require different kinds of explanation
 - the amount of credit to be provided and the associated cost to the borrower
 - the nature of the borrower. Some borrowers are likely to need different levels of explanation about how the credit products they are offered work and the associated implications
 - the channel/medium in which the credit transaction takes place. For example, face to face from a home credit provider or in a retail outlet, telephone transaction with a bank, internet transaction with a payday lender etc.
- 3.7 Whilst explanations can be provided in a written pro-forma, this is unlikely in itself to be sufficient in all instances to enable the borrower to assess whether he can afford the credit commitment. Where and as appropriate, key features of the proposed credit product should be explained to the borrower in a **personalised manner** so that the borrower can understand the effects they may have on his financial circumstances.
- 3.8 There also needs to be an opportunity for a degree of 'interactivity' between the borrower and the creditor such that the borrower is afforded the opportunity to ask questions and obtain clarification.
- 3.9 This interactivity will also better enable the creditor to form a view as to whether the borrower has understood the explanation of the credit product or whether further explanation might be required. It is unlikely that this could be achieved solely by providing the borrower with a written pro-forma.
- 3.10 This interactive component is important where credit is entered into online, since otherwise borrowers may simply engage in a 'tick box

exercise' without having proper regard to – or having understood – the relevant explanatory information.

3.11 In the case of telephone or face-to-face transactions, even where a written pro-forma is provided, the following elements of the explanation must **additionally** be provided to the borrower **orally**:²⁰

- any special or unusual features (if any) of the agreement or any features which carry a particular risk and the effect they might have on the borrower
- the consequences for the borrower arising from a failure to make payments under the agreement at the times required by the agreement
- the likelihood of legal proceedings or possession of the borrower's home in the event of a failure to keep up with repayments, and
- the borrower's ability to take away and consider the information which is required to be provided to him by the creditor before the borrower enters into the agreement.

3.12 Where there may be difficulties providing oral explanations at point of sale (for example in a busy retail outlet or online), the borrower should be directed to a telephone number from which he can be provided with an appropriate oral explanation, by the creditor, of the credit product that he is considering acquiring. Contacting such a 'helpline' should not

²⁰ The legal requirement to provide oral explanations of the matters identified in paragraph 3.11 (above), will apply from 2010 following the implementation of the relevant provisions of the Consumer Credit Directive into UK law. In the case of telephone communications, the legal requirement to provide adequate explanations of these matters shall apply where the information relating to the credit agreement set out in Schedule 2 to the Financial Services (Distance Marketing) Regulation 2004 is provided to the borrower under regulation 7(4)(b) of those Regulations.

www.opsi.gov.uk/si/si2004/20042095.htm

require a borrower to incur significant costs and the number should be readily accessible that is, callers should be able to access an advisor without undue delay.

- 3.13 The fact that a borrower might state or imply that he does not require an explanation of the credit product does not absolve the creditor from the responsibility of providing an explanation. However, if a borrower proactively identifies specific matters relating to the credit product in respect of which he does not consider he requires a detailed explanation, less emphasis or detail need be provided in respect of that specific matter than would otherwise be the case. However, if the creditor has reasonable grounds to suspect that a borrower may not understand key features of the credit product, a full explanation should in any case be provided.
- 3.14 An explanation should be given for each new agreement (including any modifying agreement) albeit in an abbreviated form where appropriate.

Constituent elements of the explanation

- 3.15 As part of the explanation, the creditor should inform the borrower of the following:

The type of credit product that would be suitable

The OFT would expect that the creditor should explain the extent to which the credit product being sought is suitable given the nature of the product and the borrower's requirements and financial circumstances.

For example, the OFT would expect that, where applicable, the borrower should be advised that the credit being sought is a short-term loan product, unsuitable for supporting sustained borrowing over longer periods, and would be expensive as a means of longer term borrowing for example a payday loan.

The cost of the credit to the borrower

The OFT would expect consideration to be given to explaining some of the following to the borrower, where appropriate/applicable, and dependent on the nature of the loan:

- the total cost of the credit to be provided
- how much is payable each month
- where APRs are given, that the APR is an annualised means of showing the level of interest and charges, but that borrowers may actually pay more or less than this
- the duration (or minimum duration) of the contract
- variations in interest rates may increase the total cost of credit and/or the duration of the repayment period²¹
- the number, frequency and amounts of instalments
- different rates apply to purchases and cash advances
- any charges for late payment, missed payment or under-payment, and
- an indication of the costs on full or partial early repayment.

²¹ Pre-contract information should set out the circumstances in which any variable rates or charges may change. If rates are stated to be variable but do not vary with Bank of England base rate, this should be made clear. If certain rates are 'tracked', this should also be made clear. It should also be explained to borrowers, where applicable, that this has not been factored into the APR.

Consideration should also be given to explaining the purpose and nature of any fees, including the basis of calculation, the likely amount, when and how the fees may be payable, and to whom. If it is not possible to give an indication of the exact amount due, an approximation could be provided along with an explanation of the basis for calculating the approximation.

The importance of keeping up with repayments and the consequences of not doing so

The risk of the following should be explained to the borrower, where applicable:

- incurring default charges (and interest where applicable)
- the total cost of the debt growing (including if only minimum repayments are made that do not pay off part of the capital)
- court action and associated costs
- impaired credit rating leading to credit being more difficult or more expensive to acquire in the future, and
- possession of property.²²

The importance of reading the pre-contract information carefully and of the right of the borrower to take the information away

3.16 The creditor should explain the importance of reading the pre-contract information and agreement carefully, and not signing unless he is sure he wants to proceed and is satisfied that he can afford the credit, and of the right of the borrower to take the pre-contract information away to

²² It should be explained to borrowers of unsecured loans that in the event of default even an unsecured loan could ultimately result in a charge being placed on the borrower's home – unless it is not, and will not be, part of the creditor's enforcement policy to seek charging orders, orders for sale or bankruptcy.

further assess the suitability of the proposed credit agreement and/or to compare with other credit offers.

Borrowers should be provided with pre-contract information which sets out clearly, in plain and intelligible language, the borrower's principal rights and responsibilities under the agreement, including but not limited to the essential characteristics of the product proposed and the specific potential impacts it may have on the borrower, including the consequences of default.

The explanation should enable the borrower to understand the impacts which the product may have on his own personal economic situation.

Pre-contract information should be provided in writing by means of the Standard European Consumer Credit Information form (SECCI),²³ where applicable.

The cooling off period

- 3.17 The creditor should inform the borrower of the existence and nature of any right of withdrawal from the credit agreement.²⁴

The borrower can ask questions

- 3.18 The creditor should inform the borrower that he can and should ask questions if he is unsure of any aspects of the pre-contract information or credit agreement or needs additional information or explanation (and reasonable opportunity should be provided for this).

The option to seek independent advice

- 3.19 The creditor should inform the borrower that he can obtain further explanation and information if he wishes from independent third parties.

²³ From 2010 following the implementation into UK law of the Consumer Credit Directive.

²⁴ From 2010 following the implementation into UK law of Article 14 of the Consumer Credit Directive, borrowers will have a period of 14 calendar days in which to withdraw from a credit agreement without giving any reason.

He should also provide the particulars of such third parties²⁵ upon receipt of a request from the borrower to do so.

The OFT would expect the borrower to be advised where he can go to obtain further information/explanation including being sign-posted to comparison websites where applicable.²⁶

Any specific special or unusual features

3.20 The creditor should inform the borrower of any specific or unusual features associated with the type of credit product to be provided including the associated risks and what impact these may have on the borrower if things go wrong.

Special features

The following represents a list of **specific** information that the OFT would expect to be included in an explanation to a potential borrower who was considering acquiring any of the following credit products (as well as the information detailed above)²⁷ given the special features and/or particular risks associated with such products:

²⁵ This would include accredited non-profit seeking providers of free and impartial advice such as Citizens Advice.

²⁶ www.lenderscompared.org.uk

²⁷ In respect of a regulated agreement under which a creditor takes an article in 'pawn', the OFT would expect the creditor to **only** provide the borrower with the explanation outlined in the 'pawnbroking' sub-section of paragraph 3.20).

Credit cards

- An indication of the credit limit likely to be offered to the individual borrower and that the borrower can request a lower limit if he wishes.
- The order of allocation of payments and the implications for the cost of borrowing.
- How balance transfers work (where applicable), including any fees and conditions which may apply.
- Any limitations on a 0 per cent or other introductory offer.
- Section 75 Consumer Credit Act 1974 protections (joint and several liability).

Credit card cheques

- How to opt out of receiving credit card cheques.

Store cards

- An indication of the credit limit likely to be offered to the individual borrower and that the borrower can request a lower limit if he wishes.

Home credit

- The total cost of credit per £100.
- The effect of extending the life of a loan or 'rolling over' loans.

Payday loans (and cheque-cashing)

- The total cost of credit per £100.
- The effect of extending the life of a loan or 'rolling over' loans.

Pawnbroking

- A pledge will be sold if not redeemed and the amount that the borrower would receive if this was the case.
- The existence and nature of any right to withdraw from the credit agreement.

Bills of sale²⁸

- The danger of losing the vehicle on which the loan is secured, how it would be possessed, and the loss this could entail.
- Possession under a Bill of Sale can take place without a court order.
- Possession may not clear all the debt owed.
- Unlike under a hire purchase (HP) agreement, there is no protection from possession having paid off a third of the amount owed or provision for voluntary termination.

Linked credit (hire purchase and conditional sale)

- You don't own the goods until you have paid off the agreement, including any 'option to purchase' fee.
- Goods can be repossessed in case of default – but if you have paid a third or more of the total amount payable, the goods become 'protected' and the creditor would require a court order to take repossession.
- The borrower has a right to voluntarily terminate the agreement at any time before the last instalment is due, by paying up to half of the total amount payable.

²⁸ In so far as these constitute regulated consumer credit agreements.

Consolidation loans

- Where applicable, consolidating loans will increase the total amount payable.
- Where applicable, that consolidating loans will involve the payment of higher interest rates and/or other charges.

Specific irresponsible lending practices

Unsatisfactory business practices and procedures

- 3.21 Failing to establish and implement clear and effective policies and procedures for the provision of explanations.

For example, in the OFT's view, creditors selling credit products via the internet would fail to meet this requirement if a borrower was able to enter into a credit agreement without having to pass through all relevant screens containing all the information and explanation that the borrower would be likely to need to adequately inform his borrowing decision.

- 3.22 Failing to implement adequate procedures to enable borrowers to be able to seek and obtain ready access to additional information or explanation from the creditor when this is required by the borrower.

In the OFT's view, this requirement would not be met if the borrower had to incur undue costs and/or experienced undue delay in seeking to access the information.

This would include, but not be limited to, failing to signpost the borrower to an accredited non-profit seeking source of free, impartial, financial advice should the borrower make it known that he wishes to seek such advice before entering into the credit agreement.

Transparency

- 3.23 Failing to provide a borrower with **any** explanations of credit products prior to granting credit.
- 3.24 Failing to provide a borrower with a sufficiently adequate explanation to enable him to make an informed borrowing decision.

In order for an explanation to be 'sufficiently adequate' in this context it would need to be comprehensible to the borrower concerned.

- 3.25 Failing to provide an adequate **oral** explanation under circumstances in which there is a legal requirement to do so.

This does not preclude the provision of written information when explanation of the credit product is provided in a 'face to face' environment – but this would need to be supplemented by an appropriate oral explanation highlighting key elements.

- 3.26 Failing to give sufficient prominence, orally where appropriate, to the need for borrowers to carefully read the information and explanations provided and satisfy themselves that they understand key aspects prior to entering into the credit agreement.
- 3.27 Providing explanations, orally or in writing, which give undue emphasis to the positive features of the credit product relative to any negative features including, but not limited to, associated risks.
- 3.28 Providing explanations, orally or in writing, which give insufficient emphasis to any negative features of the credit product including, but not limited to, the associated risks to borrowers.

For example, under circumstances in which a borrower is considering replacing or converting unsecured borrowing to secured borrowing, the differences and repercussions of default should be adequately explained.

Physical/psychological harassment

3.29 Pressurising a borrower to sign up to a credit agreement without affording him a reasonable opportunity to do any or all of the following:

- read the information provided
- ask further questions and obtain satisfactory answers
- take the information away to consider it and/or the explanations provided more carefully
- make further enquiries
- seek advice from an accredited non-profit seeking source of free, impartial, financial advice
- shop around for alternative credit products.

This would include providing a borrower with an inappropriate incentive or inducement to enter into a credit agreement **immediately** and/or actively discouraging a borrower from doing any of the above – in particular under circumstances in which the borrower has indicated to the creditor that he wishes to do one or more of the above before entering into the credit agreement.

3.30 Pressurising or requiring a borrower to sign a written acknowledgement that he has been provided with an adequate explanation when he does not wish to do so.

Deceptive and/or unfair practices

3.31 Providing misleading, incorrect and/or untrue information or explanations to borrowers under circumstances when the creditor knew, or ought to have known, that the information or explanation provided was misleading, incorrect and/or untrue.

Information or explanations may be rendered incorrect and/or untrue by either act or omission.

- Q9** Are these draft guidelines on explanations of credit products sufficiently clear?
- Q10** Are there any substantive aspects of the draft guidelines on explanations of credit products with which you disagree?
- Q11** Are there any significant omissions?
- Q12** Do you have any other suggestions for improvement to this section?
- Q13** Where applicable, should borrowers be able to access telephone 'help-lines' free of charge?
- Q14** Where applicable, should creditors be required to provide access to telephone 'help-lines' at point of sale?
- Q15** Where a borrower has entered into a long-term credit agreement, should the creditor be required to repeat aspects of the explanation of the credit product during the term of the agreement and, if so, how frequently?

4 ASSESSMENT OF AFFORDABILITY

4.1 Before granting credit or increasing the amount of credit, creditors should assess a prospective borrower's ability to meet repayments over the life of a loan in a sustainable manner. All such assessments of affordability²⁹ should involve a consideration of the impact of the loan on the borrower's overall financial well-being. It is not sufficient to solely assess the likelihood of the borrower being to repay the loan in question – which would only constitute one aspect of such an assessment.

4.2 The OFT would regard 'in a sustainable manner' in this context as constituting:

- without undue difficulty
- within a reasonable period of time
- out of income and/or available savings, without having to realise security or assets³⁰
- without incurring any/additional problem indebtedness.

4.3 The OFT would not necessarily consider repayments to be unsustainable simply because the borrower may miss occasional payments as they fall due, provided no punitive charges were imposed and the term of the loan is not extended that is, allowance is made for repayments to be made up at a later date within the original term of the loan.

²⁹ 'Assessing affordability', in the context of this guidance, is a 'borrower-focused test' which involves a creditor assessing a borrower's or potential borrower's ability to undertake a specific credit commitment, or specific additional credit commitment, without the borrower incurring financial difficulties and/or being at risk of undesirable consequences.

³⁰ For example, having to resort to the equity of any property on which the loan might be secured, other than in the very limited circumstances in which this was expressly agreed as part of the credit agreement.

- 4.4 All assessments of affordability should be based on the premise that the borrower should be able to repay the credit over the term. In the case of running account credit, where there is no fixed-term, the assessment should be based on an ability to repay an assumed drawdown (equivalent to the credit limit where there is one) over a reasonable period.
- 4.5 Where the assessment indicates that a borrower would not be able to meet repayments in a sustainable manner over the life of the loan being sought, it should not be made available for that amount and duration and with those terms and conditions. However, a smaller loan, over a shorter period, may be sustainable (in line with the assessment of affordability) and/or an alternative credit product might be more suitable – for example, a credit product that does not involve significant default charges.
- 4.6 In certain limited circumstances (such as through a known fixed period of temporarily reduced income), it might be reasonable to grant credit that is not immediately affordable. However, under such circumstances, repayment periods should be agreed in advance and borrowers should not be penalised for not making repayments prior to the conclusion of the agreed term.

Constituent elements of an assessment of affordability

- 4.7 The extent and scope of any assessment of affordability, in any particular circumstance, should be dependent upon – and proportionate to – a number of factors, including, but not necessarily limited to the following:
- The nature of the credit product.
 - The amount of credit to be provided and the associated cost to the borrower.
 - The borrower's financial situation.

- The borrower's credit history including any indications of the borrower having experienced existing or previous financial difficulty.
- The borrower's existing- and predictable future- financial commitments including any repayments due in respect of other credit products and the borrower's principal non-credit commitments.
- The impact of any reasonably foreseeable change in relevant circumstances on the borrower. This would include both changes to the borrower's own personal circumstances and, where appropriate, wider economic changes. A change in circumstances is unlikely to be considered to be 'reasonably foreseeable' unless it was known to be happening, or reasonably should have been anticipated, at the time that the assessment of affordability was undertaken. Relevant changes of circumstance would include a predictable end point of current employment due to circumstances such as retirement or the conclusion of a current employment contract with a specified finite time – either of which may lead to a fall in the borrower's disposable income.
- The vulnerability of the borrower. For example, whether the borrower has, or appears as if he may have, mental health problems which could impact on his capacity to be able to understand information and explanations and make informed decisions based on his understanding of such information and explanations.
- The borrower's actual or apparent financial capability.

4.8 Creditors may employ the use of a variety of types and sources of information to assess affordability. Such information might appropriately include some or all of the following (this is a non-exhaustive list):

- evidence of income
- evidence of expenditure
- a credit score

- a credit report from a credit reference agency
- information obtained from the borrower, whether on the application form or separately

4.9 In some instances, the creditor's standard assessment of creditworthiness³¹ may be sufficient to also assess the issue of affordability whilst in other instances it is unlikely that this will be the case. Whatever means and sources of information³² creditors employ to assess affordability should be sufficient to make an assessment³³ of the likely impact of the loan on the borrower's overall financial well-being.

4.10 In taking **income** into account in assessing affordability, such considerations should take account of both actual current income and reasonably expected future income where it is reasonably foreseeable that the latter may materially differ from the former over the anticipated repayment period of the loan. The assessment should not be based on presumptions of supplementary income, being received by the borrower at the time the assessment is being undertaken, being received in perpetuity, where the continued receipt of such additional income is not guaranteed. For example, presuming the borrower will continue, year on year, to receive an annual performance related bonus from his employer

³¹ The 'assessment of creditworthiness' is a 'creditor-focussed' test which involves the creditor assessing whether a borrower or potential borrower merits the provision of the credit product that he is seeking to acquire on the basis of considering such matters as his earning power and previous record of repayment. From 2010, following the implementation into UK law of Article 8 of the Consumer Credit Directive, there will be a legal requirement on creditors, in all instances, to undertake an assessment of a borrower's creditworthiness prior to granting credit. This legal requirement will not apply to a registered agreement under which the creditor takes any article in pawn.

³² The OFT encourages the sharing of data between creditors – subject to data protection considerations. The process of assessing affordability is facilitated by creditors registering accurate data with credit reference agencies in a timely manner about the performance of an account and/or settlement of outstanding debts/arrears.

³³ See paragraph 8.6.

which is equivalent to previous years or presuming the borrower will continue to receive overtime payments, currently being received, indefinitely, when this is not guaranteed.

- 4.11 In taking **expenditure** into account in assessing affordability, such considerations should take into account not only regular household expenditure and relatively fixed outgoings (monthly rental payments for example) but also the varying nature of certain items of expenditure over the anticipated repayment period (for example utilities bills). The assessment should not be based on a presumption that the most recent payment necessarily represents 'the norm' for the entire term of the loan.
- 4.12 Creditors who do not require documentary evidence of income and/or expenditure as part of their assessment of affordability, but rather accept the information communicated by the borrower in the absence of any supporting evidence or, in the alternative, do not seek **any** information on income and/or expenditure as part of their assessment, must ensure that whatever other means and sources of information they employ are sufficient to make a proper assessment.³⁴ Self-certification of income would not generally be considered adequate in respect of large long term loans, particularly those secured on property.
- 4.13 Whilst the OFT would generally expect the level of scrutiny required for small sum and/or short-term loans might be somewhat less than for large sum and/or long-term loans, account should be taken of the fact that the likely impact of the loan on the borrower's overall financial well-being would be directly related to his personal financial circumstances as well as the size and nature of the loan.
- 4.14 The level of scrutiny may justifiably be somewhat less stringent if the creditor has a long running financial relationship with the borrower that has been satisfactorily discharged by both sides. This will particularly be the case where the borrower has previously been the subject of a more

³⁴ See paragraph 8.6.

comprehensive assessment and there are no grounds for suspecting that his circumstances have changed in any material way since that assessment.

- 4.15 A high level of scrutiny should normally be undertaken in the case of secured loans whereby homeowners with a first mortgage access further borrowing secured by a subsequent charge on their property. This should also be the case where unsecured debt is consolidated into a secured loan.

Specific irresponsible lending practices

Unsatisfactory business practices and procedures

- 4.16 Failing to establish and implement clear and effective policies and procedures for the reasonable assessment of affordability.
- 4.17 Failing to undertake a reasonable assessment of affordability in individual cases.
- 4.18 Failing to consider sufficient appropriate information relating to the borrower's circumstances to be able to reasonably assess affordability, prior to granting credit or increasing the total amount of credit provided.

This could include, but not be limited to:

- Where applicable, failing to consult relevant and accessible databases, as and when appropriate to do so.
- Where applicable, failing to take proper account of relevant information contained on databases. Relevant information would be likely to include, for example, information on credit reference files such as notices of correction.

- Where applicable, failing to verify details of current income and/or expenditure by, for example, checking hard copies of payslip/contract of employment (when a borrower is in employment), accountant's letters (when a borrower is self-employed) or benefit statements (when a borrower is not in employment).

4.19 Restricting the assessment of affordability solely to an assessment of the borrower's ability to repay a single loan under circumstances in which he has other credit commitments.

The OFT considers that such an assessment would not constitute a proper consideration of the impact of the loan on the borrower's overall financial well-being.

4.20 Basing the consideration of affordability primarily or solely on an assessment of the value of any security provided by the applicant.

For example, the value of equity in the property on which the loan is to be secured.

The OFT would not consider this to be an irresponsible lending practice in the case of pawnbroking where the borrower's liability was limited to the pledged item.

4.21 Granting an application for credit in the absence of having undertaken **any** assessment of affordability.

4.22 Failing to undertake an assessment of creditworthiness³⁵ prior to granting credit.

4.23 Granting an application for credit when, on the basis of an affordability assessment, it is suspected or known, or reasonably ought to be suspected or known, that the credit is, or is likely to be, unaffordable.

³⁵ This will be a legal requirement from 2010.

For example, when it is self-evident that the borrower has insufficient disposable income (or alternative means of repayment) to be able to afford to repay the loan. This would include where the borrower only had sufficient disposable income to be able to make repayments that pay off interest on the loan but not the capital.

A further example would be where a borrower is advised by a creditor to consolidate his existing debts under circumstances in which it is clear from the affordability assessment, or ought to be clear from such an assessment, that this is likely to lead to a worsening of his overall financial position. Under such circumstances, the borrower would be better and more appropriately advised to seek assistance from an accredited non profit-seeking provider of free and impartial financial advice.

4.24 Advising or encouraging a borrower to take out a loan for a higher amount than he requests when, on the basis of an assessment of affordability, it is suspected or known, or reasonably ought to be suspected or known, that the credit is unaffordable.

4.25 Failing to take adequate steps, so far as is reasonable and practicable, to ensure that all information on a loan application relevant to an assessment of affordability is complete and correct.

This includes all/any information supplied by the borrower

4.26 Providing credit to a borrower prior to having received from him, or in the absence of ever having received from him, a completed application for credit.

The OFT would not consider an application to be complete if the creditor had not received a copy of the credit agreement that had been signed by the borrower.

4.27 Completing parts of an application for credit, intended to be completed by the borrower, in the absence of consent from the borrower to do so on his behalf, or with information other than as agreed with the borrower.

Under circumstances in which any parts of an application for credit, intended to be completed by the borrower, are completed by someone other than the borrower himself, with or without the borrower's consent to do so, he must be afforded a proper opportunity to check that the contents of the application have been completed accurately (and in accordance with his instruction where applicable) before he is invited to sign the application and before it is submitted to inform an affordability assessment.

- 4.28 Accepting an application for credit under circumstances in which it is suspected or known, or reasonably ought to be suspected or known, that the borrower has not been truthful in completing the application for credit with regards to the information supplied relevant to inform an assessment of affordability.

For example, when the information supplied in respect of his employment status and/or related income is clearly inconsistent with other available information.

Deceptive and/or unfair practices

- 4.29 Inducing or encouraging a borrower to falsify details relevant to an assessment of affordability on a loan application.
- 4.30 Distorting and/or falsifying details relevant to an assessment of affordability on a loan application, with or without the borrower's consent.

Q16 Are these draft guidelines on assessment of affordability issues sufficiently clear?

Q17 Are there any substantive aspects of the draft guidelines on assessment of affordability issues with which you disagree?

Q18 Are there any significant omissions?

Q19 Do you have any other suggestions for improvement to this section?

5 PRE-CONTRACTUAL ISSUES

Unsatisfactory business practices and procedures

- 5.1 Employing the use of advertising or other promotional material which suggests, either expressly or by implication, that loans are available regardless of the borrower's financial circumstances.

For example, adverts stating that credit is 'guaranteed' or 'pre-approved' or can be provided without any credit checks being undertaken.

The OFT would regard 'trading names' as being 'promotional material'.

- 5.2 Employing the use of advertising or other promotional material offering credit with pre-completed amounts of credit which either is not conditional on any associated affordability assessment or without making clear that it is conditional on such an assessment.
- 5.3 Employing the use of advertising or other promotional material which suggests, either expressly or by implication, that loans are dependent only upon the value of equity in the property on which the loan is to be secured.
- 5.4 Failing to act in the best interests of a borrower by promoting the sale of a particular credit product under circumstances in which the creditor suspects, or ought to suspect, that the product is clearly inappropriate given the borrower's needs and personal circumstances.

For example, advising a borrower to take out a secured loan, or to replace or convert an unsecured loan to a secured loan, when it is clearly not in the borrower's best interests to do so.

- 5.5 Providing credit to a borrower in the absence of having appropriately assessed the mental capacity³⁶ of the borrower, under circumstances in

³⁶ With regards to paragraphs 5.5 and 5.6, please refer to the provisions and explanatory notes of the Mental Capacity Act 2005. To be considered as lacking capacity in relation to a decision,

which the creditor suspects, or reasonably ought to suspect, that the borrower lacks the mental capacity to comprehend the information and/or explanations provided by the creditor to inform the borrower's decision.

- 5.6 Giving effect to a lending decision by a borrower which is clearly not in the borrower's best interests, particularly under circumstances in which the creditor suspects, or reasonably ought to suspect, that the borrower lacks the mental capacity to comprehend the information and/or explanations provided by the creditor to inform the borrower's decision.
- 5.7 Failing to allow the borrower to withdraw from a prospective or signed credit agreement within the cooling off period, if one is provided for either by legislation or under contract, or placing undue obstacles in the way of him doing so.
- 5.8 Failing to observe the consideration period in the case of secured loans in accordance with the requirements of section 58 of the Act.
- 5.9 Failing to limit contact with the borrower during the consideration period in accordance with the requirements of section 61 of the Act.

a person must have some form of impairment of – or disturbance in – the functioning of the mind or the brain which results in an inability to make the specific decision at that time. Capacity should be judged in relation to a specific decision. In order to demonstrate decision making capacity, a borrower should be able to understand the information relevant to the decision, including the purpose of any proposed course of action, the main benefits, risks and alternatives. In law, a person is assumed to have capacity unless/until it is established that he lacks capacity.

www.opsi.gov.uk/acts/acts2005/ukpga_20050009_en_1

www.opsi.gov.uk/acts/acts2005/en/ukpgaen_20050009_en_1.htm

Transparency

5.10 Employing the use of advertising or other promotional material in which details of risks to the borrower are not given at least the same prominence as incentives.

5.11 Employing the use of advertising or other promotional material which understates or masks the potential risks to the borrower.

This would include advertising that 'trivialises' the decision to borrow.

Physical/psychological harassment

5.12 Encouraging, inducing or incentivising a borrower to sign up to an agreement quickly.

For example, pressurising a borrower to enter into a loan immediately, without the opportunity for proper consideration, through inappropriate use of incentives or 'special' offers.

5.13 Encouraging, inducing or incentivising a borrower to take out a loan for a higher amount than the borrower requests.

The OFT would not consider that simply 'offering' a borrower a higher loan than he requests to be an irresponsible lending practice per se provided that:

- the offer of the higher amount was based on a proper assessment of affordability
- the borrower was not 'pressurised' in any way to accept the higher offer, and
- the borrower was not offered any inappropriate inducement to accept the higher offer.

Deceptive and/or unfair practices

- 5.14 Employing the use of advertising or other promotional material which either presents or omits key information relevant to a borrowing decision such as to actually or potentially create a false or misleading impression to the borrower.
- 5.15 Failing to act in the best interests of a borrower by promoting the sale of a particular product, for business and/or personal gain, under circumstances in which the product is clearly inappropriate given the borrower's needs and personal circumstances.

Differential commission rates³⁷ or 'volume over-riders'³⁸ should be offered only where these are justified in terms of the relative work involved and the amounts should be disclosed to the borrower.

- 5.16 Misleading a potential borrower into believing that his current debt repayments could be reduced over the same term when this is not in fact the case.

For example, stating a monthly repayment figure without specifically clarifying the duration of the payment period and the total amount payable.

- 5.17 Falsifying a borrower's signature on a credit agreement.

Q20 Are the draft guidelines on pre-contractual issues sufficiently clear?

Q21 Are there any substantive aspects of the draft guidelines on pre-contractual issues with which you disagree?

³⁷ The amount of any such commission should be disclosed on request.

³⁸ Volume over-riders are additional payments made on the basis of business volume and profitability.

Q22 Are there any significant omissions?

Q23 Do you have any other suggestions for improvement to this section?

6 POST-CONTRACTUAL ISSUES

Unsatisfactory business practices and procedures

- 6.1 Failing to proactively, regularly and effectively, monitor a borrower's repayment record.³⁹

The OFT considers that creditors should take appropriate action, including alerting the borrower to the risk of an escalating debt, when/if there are signs of apparent repayment difficulties.

This is particularly important in the case of borrowers with mental health problems, especially under circumstances in which they or their representatives have specifically requested that this should be done. A symptom of some mental health problems, like bipolar disorder for example, may be that the borrower may engage in unusual spending patterns.

- 6.2 Setting the minimum repayment on a running account credit agreement at a level that would not repay capital, as well as interest, within a reasonable period.
- 6.3 Requiring a borrower to make a specified number of transactions or spend a specified amount under a credit agreement in order to qualify for/retain a preferential interest rate or lower charges.
- 6.4 Failing to provide borrowers with clear information on their rights under the agreement, including how to complain if things go wrong.⁴⁰

³⁹ See also paragraph 7.4.

⁴⁰ For more information see the FOS website: www.financial-ombudsman.org.uk

www.financial-ombudsman.org.uk/publications/technical_notes/QG6.pdf

www.financial-ombudsman.org.uk/publications/pdf/guide_complaints_handlers.pdf

The Financial Ombudsman Service (FOS) sets detailed rules for complaints handling.⁴¹ The rules set in-house complaints-handling procedures that all businesses with a standard consumer credit licence have to follow by law. The rules largely reflect common sense and good business practice. In simple terms, they require consumer credit licence holders to have effective and clear procedures for dealing with any complaints fairly and reasonably. Businesses must publish a summary of their complaints procedure and the procedure must take into account, amongst other things, the time limits for dealing with complaints and the borrower's ultimate right to refer any unresolved dispute to the FOS.

Transparency

- 6.5 Failing to keep the borrower adequately informed of the state of his account via the provision of regular statements (in accordance with the requirements of section 77A or 78(4) of the Act).
- 6.6 Failing to provide promptly to the borrower, on request, a clear and transparent settlement statement in accordance with section 97⁴² of the Act, setting out the amount required to settle the agreement early.

The basis on which the settlement figure has been calculated should be explained to the borrower upon receipt of a request to do so.

- 6.7 Failing to proactively provide borrowers with adequate notice, in the form of clear, written, information, regarding any variations in the terms and conditions of the agreement which may adversely impact on the borrower, sufficiently prior to any such variations coming into effect.

⁴¹ Section 226A of the Financial Services and Markets Act 2000 outlines the applicability of the Consumer Credit Jurisdiction, operated by FOS, to complaints about licensed consumer credit businesses.

⁴² This requirement does not apply to a request made less than one month after a previous such request relating to the same agreement was complied with by the creditor.

This includes compliance with section 82 of the Act and the relevant regulations as applicable.

The OFT considers that this would extend to increases in interest rates and charges, unless these are linked to an external reference rate (which is publicly available) and the parties have agreed expressly in the contract that prior notification is not required (in which case this must be explained clearly to the borrower at the pre-contract stage).

It would also include notifying a borrower that a preferential rate on a finance deal is about to end in order to provide him with sufficient opportunity to settle the outstanding debt.

The OFT would consider 'sufficiently prior' to constitute sufficient time for the borrower to take any necessary remedial action as a consequence of the proposed variation including withdrawing from the agreement prior to the variation coming into effect. For example, under the Statement of Fair Principles established at the 'Credit Card Summit' in December 2008, relevant creditors agreed not to increase interest rates without giving the borrower at least 30 days notice and to give borrowers the option of closing their accounts and paying off the debt at the existing interest rate in the event of an increase.

- 6.8 Raising a borrower's credit limit without notifying the borrower and/or without the borrower's consent.
- 6.9 Allocating payments to the least expensive debt first (or otherwise than to the oldest or most expensive debt first) under circumstances in which it was not explained to the borrower, clearly and fully, in plain and intelligible language, in advance of him entering into the credit agreement, that this would be the case.

Physical/psychological harassment

- 6.10 Supplying credit card cheques to a borrower who has advised that he does not wish to receive them.

The existence of the right to 'opt out' should be drawn clearly and prominently to the borrower's attention at the outset of the agreement and with each provision of credit card cheques.

Deceptive and/or unfair practices

6.11 Varying interest rates and/or imposing charges where there is no express permission in the agreement to do so.

The OFT considers that this does not subsequently preclude the parties from agreeing to the change via a modifying agreement, provided that this is properly documented.

6.12 Varying interest rates and/or imposing charges where there is express permission in the agreement to do so but the terms permitting rate changes or the imposition of charges are unfair and/or unclear.

Contract terms are likely to be unfair if they are unfairly balanced in favour of the creditor, to the potential detriment of the borrower, and therefore potentially unfair within the meaning of the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs).

6.13 Varying interest rates where there is no objective basis for doing so.

For example, variable rates should not be misused to take advantage of a borrower's lack of ability to end the agreement or the restrictions on him doing so such as redemption charges.

Objective reasons would include:

- the recovery of genuine increased costs in lender funding, or
- a quantifiable change in the risk presented by a borrower such as to justify a change in the interest rate.

In the OFT's view, it would be disproportionate to increase the interest rate applied to a borrower solely on the basis that the borrower had missed a single repayment or had failed to pay in full on more than one occasion.

- 6.14 Setting settlement charges⁴³ at a level that is unfair and/or unreasonable, and which is not reflective of the credit provider's reasonable costs on early settlement.
- 6.15 Refinancing a borrower's existing credit arrangements, without the borrower's request or consent to do so, and where it is clearly against the best interests of the borrower to do so.
- 6.16 Repeatedly refinancing (or 'rolling over') a borrower's existing credit commitment for a short-term loan product.

The OFT considers that this would include a creditor allowing a borrower to sequentially enter into a number of separate agreements for short-term loan products, one after another, where the overall effect is to increase the borrower's indebtedness.

The general purpose of short-term loans, such as 'Payday loans', is to provide borrowers with a cash advance until their next pay day and they are usually about 30 days, or just over, in duration. However, in certain circumstances, the borrower can elect to 'renew' the loan for a fee and delay payment for a further agreed period of time. The purpose of payday loans is to act as a short-term solution to temporary cash flow problems experienced by consumers. They are not appropriate for supporting sustained borrowing over longer periods, for which other products are likely to be more suitable.

- 6.17 Failing to lower a borrower's credit limit following receipt of a specific request from the borrower to do so.
- 6.18 Providing a borrower with a new or additional credit facility following receipt of a specific request from the borrower not to do so.

This would include failing to remove any such facility following receipt of a specific request from the borrower to do so.

⁴³ For regulated agreements, settlement charges should be calculated in accordance with the Consumer Credit (Early Settlement) Regulations 2004).

6.19 Failing to allow the borrower to repay part of the capital under a credit agreement at any time, upon reasonable notice.

Any charges applied on such partial early repayment should be fair and reasonable and cost reflective.

Q24 Are these draft guidelines on post-contractual issues sufficiently clear?

Q25 Are there any substantive aspects of the draft guidelines on post-contractual issues with which you disagree?

Q26 Are there any significant omissions?

Q27 Do you have any other suggestions for improvement to this section?

7 HANDLING OF DEFAULT AND ARREARS

Unsatisfactory business practices and procedures

- 7.1 Failing to establish and implement clear, effective, and appropriate, policies and procedures for dealing with borrowers whose accounts fall into arrears.

These policies and procedures should make specific provision for, amongst other matters, the fair and appropriate treatment of vulnerable borrowers such as those with mental health problems.

- 7.2 Failing to treat borrowers in default or arrears difficulties with understanding and due consideration.

For example, mental health problems may impair a borrower's ability to maintain repayment schedules. Borrowers with mental health problems may be unable to engage with debt repayment and should not be regarded as – or treated as – 'uncooperative' or 'won't pay'. 'Reasonable adjustments' should be made to policies and procedures for recovering debts, to the extent that it is appropriate or necessary to do so, under circumstances in which borrowers are known to be – or reasonably ought to be suspected to be – experiencing mental health problems.

The OFT would expect creditors' policies and procedures for the appropriate treatment of borrowers with mental health problems, who are experiencing problem over-indebtedness, to reflect the principles outlined in the Money Advice Liaison Group (MALG) Guidelines '*Debt Management and Debt Collection in Relation to People with Mental Health Problems*'.⁴⁴

- 7.3 Failing to treat borrowers in default or arrears difficulties with forbearance.

⁴⁴ www.moneyadvicetrust.org/download.asp

For example, under the Statement of Fair Principles established at the 'Credit Card Summit' in December 2008, relevant creditors agreed not to increase interest rates for borrowers who have fallen behind on payments and/or those who are in serious discussion with a debt advice agency regarding a debt repayment plan.

The OFT would expect creditors to consider suspension of any further interest and charges and/or allow for deferment of payment of arrears under circumstances in which the imposition of any such further charges and/or increase in interest, or requirement for immediate payment of arrears, may either extend the borrower's repayments to an unmanageable level, or necessitate a substantive increase in the repayment period.

Transparency

7.4 Failing to inform the borrower when he has gone into arrears (as defined in sections 86B or 86C of the Act).

For example, where a borrower misses consecutive repayments or is behind by the equivalent of two periodic repayments, the OFT would expect creditors to notify the borrower promptly, and in any case within 14 days and to provide further notices at intervals of not more than six months while the borrower remains in arrears.

Consideration should be given to providing more regular information where appropriate in order to give the borrower reasonable opportunity to remedy the position, or in cases of serious arrears or default. Where applicable, a notice should be served in accordance with the relevant legislative requirements. This should also apply to default notices.

In particular, the borrower should be informed of any interest or default sums that have been added to the account.

Where statements and notices are required to be sent to borrowers who are in an Individual Voluntary Arrangement (IVA) or similar scheme, or who are known or suspected to have 'gone away', the creditor should consider, to the extent permissible under the legislation, including a covering letter (or similar) explaining the situation, to minimise the risk of confusion or distress on the part of the recipient.

- 7.5 Failing to provide borrowers with OFT information sheets on arrears or default where triggered.
- 7.6 Failing to inform the borrower, without delay or at all, of the imposition of any default sum, or any increase, reduction or suspension of interest or charges.
- 7.7 Failing to provide adequate notice to a borrower that the responsibility for recovery of a debt and/or the legal right to recover a debt has been transferred or assigned to a named third party debt recovery business.

Such notification should be provided at the point in time when the **true** debtor's location has been established.

- 7.8 Instituting court proceedings in the absence of having given the borrower appropriate notice of the intention to initiate proceedings, or having provided clear information regarding the grounds for the proceedings.

The OFT would expect such notice to be in writing and provided at least 15 working days in advance of the proceedings being initiated.

The OFT would not expect creditors to initiate court proceedings where it is known or understood that the borrower has submitted a reasonable complaint relating to the creditor/credit agreement for the consideration of FOS under the Consumer Credit Jurisdiction.

Physical/psychological harassment

- 7.9 Making undue, excessive or inappropriate use of statutory demands when a borrower falls into arrears.
- 7.10 Failing to suspend the pursuit of recovery of a debt from a borrower in default or arrears difficulties under circumstances in which the borrower disputes the debt and has, or may have, reasonable grounds for doing so.

For example, under circumstances in which the person being approached to repay the debt claims not to be the debtor in question. The onus should be on the business seeking to recover the debt to establish that the person being pursued is the person who owes the debt, not on the individual to establish that he is not the debtor.

The OFT considers that creditors have a responsibility to ensure that base data that they pass to debt collectors or sell on to debt purchase businesses, for the purposes of pursuing debt recovery, is accurate such as to facilitate the tracing and identification of the true debtor.

- 7.11 Failing to suspend the active pursuit of recovery of a debt from a borrower in default or arrears difficulties under circumstances in which an accredited non profit-seeking debt advisor is assisting the borrower in agreeing a repayment plan.

The Credit Services Association agreed with Government in 2009 that its members would not contact debtors to pursue debts for 30 days, as soon as they have been informed that an accredited debt advisor has taken on the case on behalf of the borrower. This will allow the debt advisor to negotiate with creditors and/or any third party debt recovery businesses so that a plan for repaying the debt can be agreed. A similar agreement to provide borrowers with 'breathing space' was provided by relevant creditors at the Credit Card Summit in December 2008.

- 7.12 Failing to suspend the pursuit of recovery of a debt from a borrower, under circumstances in which notification has been given, and/or it is

apparent, that the borrower has a mental health problem, unless or until a reasonable period of time has been allowed for relevant evidence to be provided as to the likely impact of the mental health problem on the borrower's ability to manage his debt and deal with a debt recovery business.

The OFT considers that an appropriate means of collecting evidence would be to use the standard Debt and Mental Health Evidence Form (DMHEF)⁴⁵ developed by the Royal College of Psychiatrists. The DMHEF is designed to assist financial advisors and creditors in requesting relevant and proportionate information from health/social care practitioners about the impact that a borrower's mental health problems might have on his ability to repay debt. In the previously mentioned MALG Guidelines, it is suggested that 28 days is a reasonable length of time to allow for the gathering of relevant evidence.

Under circumstances in which it is established that a borrower lacks the mental capacity to make relevant decisions, the OFT would expect a debt recovery business to consider delaying pursuance of the debt until the borrower regains capacity or only pursuing the debt via a responsible third party, acting on behalf of the borrower and with the borrower's prior consent.

Proportionality

7.13 Taking steps to possess the borrower's property, other than as a last resort.

The OFT would not expect a creditor to take any form of disproportionate action against borrowers in respect of arrears or default. This would include such matters as applying to the court for a charging order to be placed on the borrower's property or for an order for sale or for the borrower to be made bankrupt, without having fully and properly explored other alternative, more proportionate options for recouping arrears.

⁴⁵ www.moneyadvicetrust.org/content.asp?cid=53

Some borrowers may be unaware of the option of being able to apply to court for a 'time order'. The OFT would expect creditors to make borrowers aware of this option when and if appropriate to do so.

The OFT would expect all other possible options for dealing with the problem to be explored prior to resorting to taking steps to possess the borrower's property and for proper consideration to be given to any reasonable offer by the borrower to pay by instalments.

The OFT would further expect all second charge lenders in England and Wales to comply with the requirements of the Pre-action Protocol for Possession Claims Based on Mortgage or Home Purchase Plan Arrears in Respect of Residential Property (PAP) as set out by the Civil Justice Council in October 2008.⁴⁶ The aims of the PAP are to ensure that a lender and a borrower act fairly and reasonably with each other in resolving any matter concerning arrears, and to encourage more pre-action contact in an effort to seek agreement between the parties on alternatives to possession. Whilst there are currently no formal equivalents of the PAP in Scotland and Northern Ireland, creditors should look, wherever possible, to treat debtors in Scotland and Northern Ireland with the same levels of forbearance as they would a debtor in England or Wales.

Deceptive and/or unfair practices

7.14 Imposing unreasonable charges on borrowers in default or arrears.

In the OFT's view, any default or other charges should be limited to what is reasonable, doing no more than covering the creditor's necessary administrative costs and they should not constitute 'penalties'.

Charges and interest imposed would be considered unreasonable if they were not proportionate to the debt to which they relate.

⁴⁶ [www.civiljusticecouncil.gov.uk/files/Mortgage Pre-Action protocol 21 Oct.pdf](http://www.civiljusticecouncil.gov.uk/files/Mortgage%20Pre-Action%20protocol%2021%20Oct.pdf)

7.15 Failing to allow for alternative, affordable, payment amounts when a reasonable proposal is made by the borrower or his appointed debt advisor or representative.

The OFT would expect creditors always to respond to borrowers and/or their appointed representatives regarding such proposals in a timely manner.

Under circumstances in which creditors reject any such proposal, they should provide the borrower and/or his appointed representative with a clear, written, explanation of the basis for rejecting the proposal. They should also allow a borrower or his appointed representative a reasonable period of time to consider and respond to any counter proposal for a repayment plan subsequently made by the creditor.

The OFT would expect those seeking to recover debts to adhere to the principles of the Common Financial Statement in communications with third party financial advisors who propose repayment plans on behalf of borrowers.⁴⁷

7.16 Taking steps to enforce a debt against a borrower who is subject to a debt relief order (DRO).

This would not apply to creditors whose debts cannot be scheduled in the DRO or to those creditors whose debts are included in the DRO but who have successfully obtained leave from the court to pursue their debts.

7.17 Insisting that all arrears are paid in one payment, or in unduly large amounts, and/or within an unreasonably short period.

Q28 Are these draft guidelines on the handling of default and arrears sufficiently clear?

Q29 Are there any substantive aspects of the draft guidelines on the handling of default and arrears with which you disagree?

⁴⁷ www.moneyadvicetrust.org/images/CFS_creditor.pdf

Q30 Are there any significant omissions?

Q31 Do you have any other suggestions for improvement to this section?

Q32 Should a debt recovery business delay pursuance of a debt from a borrower lacking the capacity to make decisions relevant to the debt recovery process, unless the borrower has someone managing his affairs pursuant to a Lasting Power of Attorney or an order of the Court of Protection?

8 REGULATORY COMPLIANCE AND ENFORCEMENT

The 'section 25 test'

8.1 Section 25 of the Consumer Credit Act 1974 (the Act) provides that, in considering fitness to hold a consumer credit licence, the OFT takes into account any circumstances which appear to it to be relevant and in particular any evidence tending to show that an applicant, licensee, or its employees, agents or associates,⁴⁸ past or present, have:

- committed offences involving fraud or other dishonesty or violence
- failed to comply with the Act or any other enactment regulating the provision of credit to individuals or other consumer protection legislation
- failed to comply with the requirements of Part 16 of the Financial Services and Markets Act 2000 so far as they relate to the consumer credit jurisdiction operated by the Financial Ombudsman Service
- practiced discrimination in connection with the carrying on of their business
- engaged in business practices appearing to the OFT to be deceitful, oppressive or otherwise unfair or improper, whether unlawful or not.

8.2 The Act also requires that in determining whether a person is fit to hold a licence to operate a consumer credit business, the OFT shall have regard to the skills, knowledge and experience in relation to consumer credit businesses of that person and other persons who will participate in any business carried on by him under a licence and any practices and procedures to be implemented in connection with any such business.

⁴⁸ Including 'business associates' within the meaning of section 25(3) of the Act.

- 8.3 In considering a person's fitness to hold a consumer credit licence, the OFT will also take account of whether he has complied with all relevant OFT guidance.
- 8.4 If a creditor chooses to do business and/or continues to do business with a third party which it knows, or reasonably ought to have known, is engaged in behaviour which is inconsistent with fitness to hold a licence, its own fitness can be called into consideration.⁴⁹ Licensed businesses can not ignore the unfair practices of those acting on their behalf – whether in-house or external.

Evidence of compliance

- 8.5 The OFT expects creditors to take all reasonable steps to ensure that they have suitable business practices and procedures in place to ensure compliance (for example through training, auditing, disciplinary policies/procedures, or any other means necessary and appropriate to the business), implementing any changes as necessary.
- 8.6 If the OFT requires them to do so, it will be incumbent on creditors to be able to **positively demonstrate to the OFT's satisfaction** that their policies and procedures:

⁴⁹ It is not for the OFT to specify in this guidance how creditors' choices about third party selection are made nor to advise on desired conduct between creditors and third parties. However, the OFT would expect creditors to take care in selecting third parties with whom to form business associations, complaints about any such third parties to be properly investigated by creditors and firm action to be taken by creditors in respect of any such complaints as appropriate.

- ensure appropriate explanations⁵⁰ of credit products are provided to actual and potential borrowers and that they are adequate to enable the borrower to assess whether he can afford the credit commitment
- are appropriate to assess a prospective borrower's ability to be able to afford to meet repayments over the life of a loan in a sustainable manner
- deal appropriately with borrowers whose accounts have fallen into arrears
- have been implemented in practice and are effective⁵¹
- are proactively monitored to assess their ongoing effectiveness
- have been appropriately amended on the basis of the results of such monitoring as and when appropriate to do so.

8.7 These policies and procedures should be documented and capable of being made available for inspection by the OFT and/or the relevant local authority Trading Standards Service. They should contain sufficient detail⁵² in respect of the actual procedures employed to allow the OFT to be able to form a view as to whether the procedures appear appropriate.

⁵⁰ Such explanations would need to take account of the circumstances of the borrower and the nature of the financial product. The 'circumstances of the borrower' would not necessarily only include his financial standing, income, outgoings etc., but may also include such matters as his apparent financial capability and/or mental capacity.

⁵¹ In considering 'effectiveness', the OFT may, for example, require data on the number of loans that have resulted in arrears/defaults within a specified period.

⁵² A document outlining the business' policies and procedures for assessing affordability, for example, which simply stated that 'appropriate means are employed to assess affordability and ability to repay', or words of similar effect, would not be considered to contain sufficient detail in the absence of more information on the specific means employed.

- 8.8 Similar assessments may be made of applicants for consumer credit licences.
- 8.9 Creditors should keep a record of the checks they undertake to assess compliance with this guidance.
- 8.10 The OFT may use its information gathering powers in order to seek evidence of compliance with this guidance in appropriate cases. In addition to its power to require information generally under section 36B of the Consumer Credit Act 1974 ('the Act'), in accordance with section 36C of the Act, the OFT may, by notice to a licensee, require him to facilitate access to his business premises by an officer of the OFT or a trading standards officer, in order to allow them to observe the carrying on of the licensed business or to inspect documents of the licensee which are specified or described in the notice.

Enforcement principles

- 8.11 The OFT is committed to fair, effective and proportionate enforcement. In practice this means that where we identify non-compliance with the law and/or relevant OFT guidance, we will decide on the appropriate regulatory response in the light of the facts and circumstances of the individual case, including the risk of detriment to consumers.
- 8.12 Where we think it sufficient just to ensure that conduct is changed, and we do not have fundamental concerns about integrity or other aspects of fitness, we will use one of the appropriate compliance tools available to us.
- 8.13 It may, for example, be appropriate for the OFT to take action under Part 8 of the Enterprise Act 2002 in respect of domestic or Community infringements falling within sections 211 or 212 of that Act. Our approach to the use of these powers is discussed in *Enforcement of consumer protection legislation – Guidance on Part 8 of the Enterprise*
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Act (OFT512). We also co-ordinate such actions undertaken by other enforcers. The OFT also has both civil and criminal enforcement powers under the Consumer Protection from Unfair Trading Regulations 2008, which came into force on 26 May 2008.

- 8.14 Alternatively, we may consider it appropriate to impose specific 'requirements' on a trader where we are dissatisfied with certain aspects of conduct or that of any associates. Failure to comply with a Consumer Credit Act section 33A requirement can lead to the imposition of a financial penalty of up to £50,000 per instance. We may also compulsorily vary a licence, for instance to limit the activities for which a trader is licensed, or limit the life of the licence.
- 8.15 In cases of serious misconduct and/or where there are concerns about integrity, and the OFT has evidence tending to show that a person is unfit to hold a consumer credit licence, it can take action with a view to refusing or revoking the credit licence of the person concerned. Engaging in irresponsible lending practices would constitute grounds for the OFT to consider fitness to hold a licence.⁵³

Q33 Are these draft guidelines on regulatory compliance and enforcement sufficiently clear?

Q34 Are there any substantive aspects of the draft guidelines on regulatory compliance and enforcement with which you disagree?

Q35 Are there any significant omissions?

Q36 Do you have any other suggestions for improvement to this section?

⁵³ See Chapter one of this guidance document.

ANNEXES

A SUMMARY OF QUESTIONS

Chapter 1 Introduction

- A.1 Does the introductory chapter set out the OFT's general view on the scope of what might constitute irresponsible lending practices, and the legal test for irresponsible lending, sufficiently clearly?
- A.2 Are there any substantive aspects with which you disagree?
- A.3 Do you consider that there are any significant omissions?
- A.4 Do you have any other suggestions for improvement?

Chapter 2 General principles of lending

- A.5 Are the draft guidelines on the general principles of lending sufficiently clear?
- A.6 Are there any substantive aspects with which you disagree?
- A.7 Are there any significant omissions?
- A.8 Do you have any other suggestions for improvement to this section?

Chapter 3 Explanations of credit products

- A.9 Are these draft guidelines on explanations of credit products sufficiently clear?
- A.10 Are there any substantive aspects of the draft guidelines on explanations of credit products with which you disagree?
- A.11 Are there any significant omissions?
- A.12 Do you have any other suggestions for improvement to this section?
- A.13 Where applicable, should borrowers be able to access telephone 'help-lines' free of charge?

- A.14 Where applicable, should creditors be required to provide access to telephone 'help-lines' at point of sale?
- A.15 Where a borrower has entered into a long-term credit agreement, should the creditor be required to repeat aspects of the explanation of the credit product during the term of the agreement and, if so, how frequently?

Chapter 4 Assessment of affordability

- A.16 Are these draft guidelines on assessment of affordability issues sufficiently clear?
- A.17 Are there any substantive aspects of the draft guidelines on assessment of affordability issues with which you disagree?
- A.18 Are there any significant omissions?
- A.19 Do you have any other suggestions for improvement to this section?

Chapter 5 Pre-contractual issues

- A.20 Are the draft guidelines on pre-contractual issues sufficiently clear?
- A.21 Are there any substantive aspects of the draft guidelines on pre-contractual issues with which you disagree?
- A.22 Are there any significant omissions?
- A.23 Do you have any other suggestions for improvement to this section?

Chapter 6 Post-contractual issues

- A.24 Are these draft guidelines on post-contractual issues sufficiently clear?
- A.25 Are there any substantive aspects of the draft guidelines on post-contractual issues with which you disagree?
- A.26 Are there any significant omissions?

A.27 Do you have any other suggestions for improvement to this section?

Chapter 7 Handling of default and arrears

A.28 Are these draft guidelines on the handling of default and arrears sufficiently clear?

A.29 Are there any substantive aspects of the draft guidelines on the handling of default and arrears with which you disagree?

A.30 Are there any significant omissions?

A.31 Do you have any other suggestions for improvement to this section?

A.32 Should a debt recovery business delay pursuance of a debt from a borrower lacking the capacity to make decisions relevant to the debt recovery process, unless the borrower has someone managing his affairs pursuant to a Lasting Power of Attorney or an order of the Court of Protection?

Chapter 8 Regulatory compliance and enforcement

A.33 Are these draft guidelines on regulatory compliance and enforcement sufficiently clear?

A.34 Are there any substantive aspects of the draft guidelines on regulatory compliance and enforcement with which you disagree?

A.35 Are there any significant omissions?

A.36 Do you have any other suggestions for improvement to this section?

B LIST OF CONSULTEES

The following organisations and individuals have been consulted. We would welcome suggestions of others who may wish to be involved in this consultation process.

Accountant in Bankruptcy

Advertising Standards Authority

Advice NI

Advice UK

Age Concern

Association of Finance Brokers

Association of Mortgage Intermediaries

Banking Code Standards Board

British Bankers' Association

British Cheque Cashers Association

British Retail Consortium

Callcredit

CIFAS

Citizens Advice

Citizens Advice Scotland

Citizens Advice Wales

Civil Court Users Association

Consumer Credit Counselling Service

Consumer Credit Trade Association

Consumer Finance Association

Consumer Focus

Consumer Focus Scotland

Consumer Focus Wales

Consumer Focus Post (Northern Ireland)

Council of Mortgage Lenders

Debt on our Doorstep

Department for Business, Enterprise and Regulatory Reform (BERR)

Department of Enterprise, Trade and Investment (DETINI)

Equifax

European Coalition for Responsible Credit

Experian

Finance and Leasing Association

Finance Industry Standards Association

Financial Ombudsman Service

Financial Services Authority

Financial Services Consumer Panel

General Consumer Council for Northern Ireland (GCC NI)

Her Majesty's Treasury

Institute of Credit Management

LACORS

LBRO

Mind

Money Advice Liaison Group

Money Advice Scotland

Money Advice Trust

Northern Ireland Association of Citizens Advice Bureaux

Royal College of Psychiatrists

Shelter

Teletrack

The CBI

Trading Standards Institute

UK Cards Association

Welsh Assembly Government

Which?

C CONSULTATION CRITERIA

Public bodies are required to perform consultations in accordance with the following criteria wherever possible:

- C.1 **When to consult** – formal consultation should take place at a stage when there is scope to influence the policy outcome.
- C.2 **Duration of consultation exercises** – consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
- C.3 **Clarity of scope and impact** – consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
- C.4 **Accessibility of consultation exercises** – consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
- C.5 **The burden of consultation** – keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
- C.6 **Responsiveness of consultation exercises** – consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
- C.7 **Capacity to consult** – officials running consultations should seek guidance in how to run effective consultation exercises and share what they have learned from the experience.
- C.8 The full *Code of Practice on Consultation* can be found on the website of the Department for Business, Enterprise and Regulatory Reform:
www.berr.gov.uk/files/file47158.pdf