

Credit card cheques: a DTI discussion paper

OFT response to consultation document

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1 EXECUTIVE SUMMARY

- 1.1 Transparency promotes understanding of credit and underpins the principle of 'truth in lending'. It equips consumers to make informed decisions, and to select the product that best suits their needs at a competitive price. This applies equally to credit card cheques where consumers are no less entitled to an accurate, clear and comprehensive indication of the nature and true costs involved.
- 1.2 But consumers do not appear to be getting this information. Though positive steps have been taken by the industry in the issuing of best practice guidelines, there is still an unacceptable lack of transparency about credit card cheques. In particular, in relation to the costs associated with such cheques. As a result, consumers are at risk of significant detriment, both financial and otherwise.
- 1.3 We believe strongly that government should introduce legislation to ensure that consumers are provided with the information they need, and at the times they need it, so that the potential for detriment is minimised. We also believe that credit card cheques should not be sent unless the consumer has opted for this, as part of the credit agreement, and that there should be periodic reminders of the right to opt out subsequently.
- 1.4 If further regulation does not prove effective to safeguard consumer interests, we suggest consideration of a statutory ban on sending credit card cheques unsolicited, by amending the Consumer Credit Act. While credit card cheques may be useful to some consumers and in some circumstances, this has to be set against the risks to consumers generally, particularly the more vulnerable.
- 1.5 Our detailed responses to the consultation questions are set out below. We have numbered the questions from 1 to 22 for ease of reference.

2 THE NATURE OF THE PRODUCT

- 2.1 Credit card cheques are a relatively new phenomenon and are used only infrequently by consumers. It is likely therefore that most consumers will have only a superficial knowledge of what they are and how they operate and the implications of using them. This is supported by the complaints and other information available to the OFT.
- 2.2 Consumers with bank accounts can be expected to be familiar with the operation of cheques and other debits on the account and that all have an equal impact in reducing the balance available. The same is not true with cheques drawn on a credit card account, which are treated differently from purchases using the card. Consumers need to be aware of these differences in operation and of the terms that apply to the use of credit card cheques. Without this knowledge they are at risk of additional and unexpected costs.
- 2.3 One of the key differences between use of a credit card cheque and payment by card relates to the interest rate and the period over which this applies. Consumers appear often to be unaware that the rate of interest applicable to credit card cheques may be higher than for transactions made with the card itself and is unlikely to be covered by any special deals. They may also be unaware that interest is payable from the date of the transaction, with no interest grace period. This may catch unawares those who normally pay in full each month, as well as those who leave balances outstanding on the card.
- 2.4 Two surveys point to this as a problem. The 2002 Household Survey on the Cause, Extent and Effects of Overindebtedness recorded that only one-third of cheque users knew that they paid interest on the money straight away. A recent survey by More Than, published in December 2005, found that many people were unaware that the interest rate is higher on credit card cheques than for purchases with the card. Nearly one-fifth of those questioned thought the rate was the same, and many did not know how interest was applied.

- 2.5 Consumers may similarly be unaware of the fees applicable to credit card cheque transactions. The Regulatory Impact Assessment (RIA) estimates that detriment resulting from lack of knowledge of such charges may be £4.6 million. However, this was based on an average fee of £2. While the minimum fee may be around this level, fees are typically charged as a percentage of the value of the transaction and tend to be in the region of two per cent (up to a maximum of say £35 or £50). The RIA notes that the average value of a credit card cheque transaction in 2004 was £850, and a two per cent fee on this would equate to £17. Detriment arising from such fees may therefore be nearer to £39 million, eight times the amount predicted.
- 2.6 In addition, consumers may not be aware that they may not get the same level of protection when paying for goods or services with a credit card cheque as with a card. This is because section 75 of the Consumer Credit Act 1974 (CCA) may not apply. This will depend upon whether cheques are issued under, or in contemplation of, arrangements between the retailer and the card issuer. The extent of section 75 liability in this area may be clarified by the forthcoming judgment of the Court of Appeal in the recent case involving arrangements and overseas transactions.
- 2.7 Our records suggest that consumers generally assume that they will get section 75 cover when making purchases with a credit card cheque. Indeed this may well have influenced their decision to use this method of payment rather than, say, a bank cheque. Consumers are unlikely to find out that this may not be the case unless and until they make a claim.
- 2.8 The Household Survey found that in almost all cases credit card cheques were sent unsolicited. This is supported by the findings of the Treasury Select Committee (TSC) investigation into the credit card market, which noted that cheques are often routinely sent out even when the consumer may not have used any previously. More Than's research found that more than one-third of people had received cheques unsolicited and one-fifth felt they had been encouraged to use these.

- 2.9 Credit card cheques tend to be marketed vigorously by issuers. This may encourage consumers to use them without fully appreciating the consequences. They may also be encouraged to use cheques in inappropriate circumstances, for example, to pay utility bills. This may aggravate difficulties elsewhere. Energywatch has highlighted the potential for detriment from debt and disconnection in the energy market and the TSC commented that encouraging consumers to get into debt to pay household bills did not in its view constitute responsible lending.
- 2.10 The reported number of credit card cheques written in 2004 (3.4 million) is small compared to all credit card purchases. But the number is considerable, and as the cheques are generally used for higher value transactions (£850 compared to £58 for use of a credit card) there is a significant potential for consumer detriment. It is reasonable to expect that use of this product will continue to grow and with it any potential for detriment.
- 2.11 Some information is available about credit card cheques and how they are used and viewed by consumers, but further research would be useful to inform measures that may be taken as a result of this consultation. Card issuers may be recording information as a matter of course, to inform and target future promotions. The Household Survey reported that one-third of cheque users had used them to pay bills or pay off debts, but we do not know which of these options was the more popular. Nor do we know to what purpose the other two-thirds of cheques were put. While information provided to the TSC suggested that credit card cheques are most often used for balance transfers, our records suggest that consumers may be more likely to use them to pay for goods and services. The RIA suggests that credit card cheques tend to be used in unusual unpredictable situations rather than in a pre-meditated way.
- 2.12 Research might also reveal the extent to which credit card cheques are used in circumstances where card payments are not possible and hence the extent to which they represent 'added value'. This impacts on how useful they really are to consumers, and hence whether a ban on

sending cheques unsolicited might be detrimental as has been claimed. It was suggested during the Committee stage of the Consumer Credit Bill that in virtually all cases in which credit card cheques are used, the consumer could have used a credit card instead, but we have no way of verifying this. If true, it would call into question the usefulness of the product.

2.13 Q1 – see above.

2.14 Q2 to 3 – we can only speculate as to why some traders may accept credit card cheques but not credit cards. Presumably this is linked to the costs associated with card acceptance, given the fees charged to small businesses and the costs of chip and PIN technology. Some traders may also be operating under a misguided impression that credit card cheques are guaranteed, when this is not the case, or may mistake them for bank cheques or assume that they are treated similarly by banks.

2.15 Q4 – no comment.

2.16 Q5 – some credit card cheques can appear similar to bank cheques, which may exacerbate consumer confusion. A clearer visual distinction would help to emphasise that the products operate very differently.

3 EVIDENCE OF CONSUMER DETRIMENT

- 3.1 The paper says that to date the direct link between the issuing of credit card cheques and detriment to the consumer remains inconclusive. However, this appears to be contradicted by the various research findings as summarised in the paper, and by the accompanying RIA.
- 3.2 In the OFT's view, there is good evidence of detriment linked to the use of credit card cheques. This is clear from complaints to the OFT and other information including the recent More Than research. We agree with the RIA that the potential for detriment arises in particular from a lack of awareness of the costs associated with credit card cheques, including the interest rate and fees and the fact that interest is applied from the date of the transaction.
- 3.3 The Task Force on Tackling Overindebtedness expressed concerns that many consumers appeared unaware that different terms and conditions applied to spending on credit card cheques than to use of the card. The MORI research for DTI had also established evidence of irresponsible lending, which seemed to affect disproportionately those at high risk of over-commitment. The Task Force called for additional research on the basis for and impact of the sending of unsolicited cheques, to establish whether further action was needed.
- 3.4 The TSC similarly concluded that marketing literature for credit card cheques was inadequate, with key information relegated to the small print or missing altogether. It suggested that cheques were being issued irresponsibly by some lenders. Regulatory changes were necessary, including a ban on the sending of unsolicited credit card cheques.

- 3.5 The RIA suggests that consumer detriment resulting from unanticipated interest and other charges could be as high as £23 million, a combination of £18 million from interest payments and £4.6 million from fees. We have no reason to dispute the first of these figures but we believe the latter is grossly underestimated (see paragraph 2.5 above). This would bring the total to around £57 million. In addition there is the potential for detriment arising from a belief that section 75 applies to credit card cheque transactions.
- 3.6 There may also be knock-on effects, for example, in relation to over-indebtedness. Research by DTI and various consumer organisations has clearly demonstrated the potential costs of over-indebtedness, both for individual borrowers and their families and more generally. Such costs may include non-financial detriment such as stress or other health problems.
- 3.7 In addition, there may be detrimental effects on consumer confidence in financial products and markets. If consumers have bad experiences of using credit card cheques, or encounter irresponsible lending practices, this may affect their expectations more generally, and their willingness to take advantage of other credit products even where these may offer useful benefits.
- 3.8 It is unclear to what extent industry changes have improved consumer understanding of credit card cheques. We agree with the RIA that the changes may not have had much impact in practice, as information may not be sufficiently clear or prominent and may not be provided at the right times. Further research would be needed. In the absence of that, we agree with the RIA that the potential for detriment in this area is likely to run into several millions and could well be much higher.
- 3.9 The OFT continues to receive complaints about credit card cheques. Whilst the numbers are relatively small, this does not in itself imply a lack of detriment. On the contrary, given consumers' ignorance about credit card cheques as demonstrated by the various surveys, a low level of complaints is hardly surprising.

- 3.10 Consumers may not realise that they are paying more for credit card cheques. This may not be apparent from their next monthly statement and even if that shows a higher cost overall the consumer may not attribute the increase to the use of a cheque. In particular, they may not realise that they were charged interest from the date of the transaction. As a result, they may be unaware that they have a cause for complaint.
- 3.11 It is notable that the OFT has on average received more complaints relating to credit card cheques since the changes to the Banking Code, despite the measures taken to address concerns about the product. The complaints generally fall into one of two categories: those concerned with why cheques were sent in the first place, the other demonstrating a lack of understanding about the way the cheques operate. Complainants in the first group do not generally appear to know that they now have a right under the Banking Code to opt out of receiving further cheques. Those in the second group often emphasise the lack of clear information with regard to the additional costs of using the product. Few appear to have been aware that section 75 may not apply.
- 3.12 Q6 to 8 – see above comments.

4 TRANSPARENCY

- 4.1 The Consumer Credit White Paper, published in December 2003, set out the Government's vision for creating an efficient and fair consumer credit market, empowering consumers to make fully informed decisions and enabling lenders to compete on a fair and even basis. Consumers should be given an accurate, clear and comprehensive indication of the nature and true cost of credit facilities offered. Information should be provided at the right time and in a form that the consumer can use to make informed decisions.
- 4.2 This applies just as much to credit card cheques as to other credit products. Consumers need to be aware of certain key information about credit card cheques. In particular, they need to understand the nature of the product and how cheques differ from card usage, in terms of costs and level of protection. This is also important so that they can make an informed decision whether to opt in or out of receiving cheques. They also need to understand how the cheques differ from normal bank cheques.
- 4.3 The information needs to include details of the interest rate applicable to credit card cheques (and that this differs from payments by card), that interest is charged from the date of the transaction (with no interest grace period), and that there are additional fees (which would not apply to card purchases). It also needs to include a clear indication, where applicable, that purchases using a credit card cheque do not benefit from the same level of protection as using a card. In addition, the consumer needs to be aware of any right of opt-out and how this can be exercised.
- 4.4 The information needs to be provided clearly and with sufficient prominence so that the consumer is likely to see it and to appreciate its significance. The information should be specific and tailored to the particular product. Where possible, it should state the actual amounts payable, this might be achieved by means of a worked example.

- 4.5 The information should be readily comprehensible, so that it is meaningful to consumers. Where appropriate, it should be accompanied by a suitable explanation. It would not be sufficient, for example, to state that section 75 may not apply without explaining what this means in practice so that consumers can understand the level of protection that they may be missing if they use a cheque rather than the card.
- 4.6 Finally, the information should be provided at the times that consumers need it and in a way that is tailored to the circumstances. It is not sufficient merely to include information in the initial credit agreement. There is evidence that many consumers do not read credit agreements properly – an OFT survey in 2004 found that consumers are often overwhelmed by the information they receive about credit cards, and 51 per cent said that they do not read the small print in agreements. This is reinforced by the MORI research as referred to in the consultation paper.
- 4.7 In any event, information in the credit agreement may be forgotten by the time the consumer comes to consider using the cheques. They may not have retained a copy of the agreement and even if they have are unlikely to consult it. It is important therefore that there are periodic reminders regarding the key features of credit card cheques, in particular the costs and possible lack of protection (and how these differ from normal card usage). In the OFT's view, this information should be provided with each mailing of cheques, and (in a summarised form) on each monthly statement. There should also be some key information on the cheque itself, as a tangible reminder.

5 SELF REGULATION

- 5.1 The OFT welcomes the measures taken by the industry to improve the provision of information to consumers about credit card cheques. However, we would question whether these go far enough. In our view, there are important gaps in what is currently required under the Banking Code and also ambiguities in some of the Code provisions which may undermine their purpose. In addition, there are issues regarding monitoring and enforcement of compliance with the Code.
- 5.2 The TSC noted in 2004 that while the APACS guidelines were a positive step, there was room for improvement in how information about interest rates and terms and conditions was communicated to the consumer. The guidelines were subsequently incorporated into the Banking Code, with some additional provisions relating to the marketing of cheques. Nothing, however, was added about the form and manner in which information is provided and the timing of such provision. Such matters continue to be left to the discretion of individual issuers.
- 5.3 Hence, although the Code stipulates what information should be provided to customers, it does not generally specify how and when this must be provided. It would be open to issuers to incorporate the information as part of the credit agreement, where it may go unnoticed. Under current rules, any information over and above that required by regulations must appear after all of the prescribed information and the signature box, so may not be seen by the consumer. As noted above, there are questions over the extent to which consumers read the 'small print' of credit agreements, and they may be less likely to do so where information is positioned after the signature box.

- 5.4 The Code requires issuers to provide information explaining the purpose and key features of credit card cheques, including the applicable interest rate, when interest begins to accrue, transaction charges and any lack of section 75 protection. We agree that these are key to ensuring adequate transparency. However, there is no requirement that this information be provided with each mailing of cheques, or that there should be periodic reminders, for example, in monthly statements. Information in the initial credit agreement may well be forgotten by the time the consumer comes to use the cheques.
- 5.5 There are also no requirements regarding the manner in which information is provided, and relative prominence. Information included in the credit agreement would – if not expressly required by regulations – have to appear as part of the terms and conditions, and so would be less prominent than information prior to the signature box. As a result, it may not be noticed by consumers, or they may fail to appreciate its significance.
- 5.6 If information also accompanies each mailing of cheques, there is similarly a risk that it may go unnoticed. There is no requirement to provide a separate leaflet or other document, summarising the key features of the product and how it differs from use of the credit card. Nor is there any requirement to provide the information in a specified manner and 'together as a whole'. The information may appear at different points within a letter, or may be dispersed across a set of marketing material.
- 5.7 We note in particular that there is no requirement to include the information in a 'summary box' or other prescribed format. We have welcomed the initiatives taken by the credit card industry in developing the concept of a summary box, as a way of ensuring that key information is provided to consumers in a consistent and standardised format. This helps to promote consumer understanding and enables comparisons to be drawn between different products and usages – OFT research into credit card transparency in 2004 found that 89 per cent of consumers considered the summary box approach to be useful and 73

per cent claimed they would read it. However, the APACS requirements are currently limited to pre-contract information and there is nothing to require similar approaches in monthly statements and other documentation.

- 5.8 There is also no requirement that information be of a minimum font size or prominence. Where marketing material promotes the use of credit card cheques, there is no stipulation that equal prominence be given to the consequences in terms of costs and level of protection. A 'balance' requirement of this type would be a useful addition to the Code, along similar lines to the Financial Services Authority (FSA) rule on financial promotions.
- 5.9 The Banking Code requires issuers to provide new customers with a first time opt-out of receiving credit card cheques and to allow existing customers to opt out at any time on request. However, there is nothing in the Code to stipulate how and when customers should be alerted to this right, nor that there should be regular reminders during the course of the agreement.
- 5.10 For new customers, it may not be sufficient to include reference as part of the credit agreement. As noted above, consumers may not read the agreement carefully and may not notice information appearing as part of the 'small print'. Signature of the agreement should not be taken to signify that the consumer has read and understood that they have a right of opt-out and have elected not to exercise it. Furthermore, in order that consumers can make an informed decision this needs to be accompanied by a clear and full description of the nature of the product and the associated costs etc. Consumers need to understand the implications of credit card cheques so that they can decide whether they want them.

- 5.11 For existing customers, it is important that they are alerted clearly to the right to opt out of receiving cheques. This should be done both initially and with each mailing of cheques. There should also be periodic reminders including as part of monthly statements. Again, there should be cross-reference to a summary of the key features of credit card cheques, including the costs and possible lack of protection (and how these differ from credit card usage).
- 5.12 Consumers should be clearly informed how they can exercise any right of opt-out, and the procedures for doing so should be simple and straightforward. We would suggest that the customer should be given a choice of either returning a form in a pre-paid envelope or telephoning a freephone number, so that they can choose whichever is easier. The form could be included as part of an introductory pack, provided that it is clearly noticeable. An answerphone facility would be useful as otherwise consumers may be worried about being pressurised into changing their mind, or taking out additional products, which might deter them from exercising the opt-out right.
- 5.13 The Banking Code specifies that certain categories of customer should not be issued with credit card cheques. This helps to promote responsible lending and to address the concerns raised in the Household Survey that cheques were sent to above average proportions of cardholders who were either in financial difficulty or spending a high proportion of their income on repaying debts. However, the Code provisions would benefit from greater clarity, to ensure that lenders act responsibly and do not target vulnerable consumers.

- 5.14 For example, cheques must not be sent to customers 'with limited scope to borrow more', but it is unclear how this is assessed. In particular, whether it would include those near to their credit limit (given that the average cheque transaction is £850) and those making only minimum repayments. Before cheques are sent the issuer must 'assess the customer's ability to repay' and their 'suitability', but there is no guidance as to what should be taken into account in such assessment. For example, it is unclear whether it would be considered 'suitable' to send credit card cheques to customers who have never used any in the past, or whether this would be regarded as irresponsible marketing.
- 5.15 Q9 – see above comments.

6 LEGISLATIVE PROPOSALS ON TRANSPARENCY

- 6.1 As noted above, transparency is key in promoting 'truth in lending' and minimising the risk of detriment. It is important that information about credit card cheques is provided to consumers, in particular as regards the costs associated with the product (and how these differ from normal card usage), the possible lack of section 75 protection, and any right of opt-out.
- 6.2 Some steps have already been taken by the industry to ensure that key information is available to consumers. However, we are not convinced that this is sufficient, for the reasons outlined above. We believe that legislation is needed to ensure that information is provided in a clear and consistent manner and in a way that consumers can understand. The requirements should be tailored to the different stages at which information may be needed.
- 6.3 It is not sufficient to include information in the initial credit agreement. This may not be read, and even if it is the information is likely to be forgotten by the time the consumer comes to consider using the cheques. It is important that information also accompanies each mailing of cheques, so that the consumer is alerted to the key features of the product. This was a core recommendation of the Overindebtedness Task Force and the TSC reports.
- 6.4 In addition, key information should be highlighted on the cheques themselves and on any cheque book or counterfoil. This is important as otherwise there may be nothing to prompt the consumer when they come to write a cheque. Information sent with the original mailshot may not be retained, or may become separated from the cheques, so may lose its impact over time. There should also be periodic reminders of the costs associated with credit card cheques (and the right of opt-out) as part of monthly statements.

- 6.5 There should be provisions regulating the form and manner in which information is provided. It is not sufficient to require information if this is unlikely to be read or if consumers may not appreciate its significance, or if there is scope to downplay the negative aspects. Key information should be presented 'together as a whole' and with rules on ordering and prominence, and consideration should also be given to prescribed warning statements as a way of highlighting key messages.
- 6.6 We appreciate that some of this might require primary legislation. However, we believe that there is considerable scope to improve transparency in relation to credit card cheques by means of secondary legislation. This could be reinforced on a voluntary basis by industry, through further expansion of the Banking Code or additional best practice guidelines. As noted in the Consumer Credit White Paper, it is often by means of a combination of regulation and self-regulation that consumer interests are best served.
- 6.7 In our view, regulations should be made under sections 60, 179 and 78(4) of the Consumer Credit Act (CCA), as described below. In addition, consideration should be given to the making of conduct of business regulations under section 26. This enables the Secretary of State to make regulations as to the conduct by a licensee of his business, including as to the information to be furnished by the trader to persons with whom he does business and the way it is to be furnished.

Key information

- 6.8 What is 'key' information will depend upon the stage at which information is to be disclosed. In general, however, we consider that the following is key to the consumer's understanding of the product:
- the nature of credit card cheques and how they differ from use of a credit card
 - whether credit card cheque transactions are treated in a similar way to cash advances rather than purchases

- the rate of interest applicable to credit card cheques and if this differs from the usual purchase rate
- when interest starts and stops being applied and (if the case) that there is no interest grace period
- whether additional fees or charges apply and the amount of such charges (preferably in cash terms)
- if applicable, that purchases using a credit card cheque may not benefit from the same protection as using a card.

6.9 In addition, the consumer should be clearly informed of any right of opt-out and how this may be exercised. It should also be made clear that cheques can only be for amounts within the credit limit, and the consequences of exceeding the credit limit. The consumer should also be advised how to dispose of unwanted cheques safely, in order to avoid the potential for fraud (which may increase as a consequence of increased security measures for other payment mechanisms such as chip and PIN).

6.10 Q10 – see above comments.

Information at contract

6.11 We agree that an amendment should be made to the Consumer Credit (Agreements) Regulations made under section 60 CCA. This should require the inclusion of key information relating to credit card cheques, as part of the prescribed information prior to the signature box.

- 6.12 This should include in particular information about the costs associated with credit card cheques (and how these differ from card usage) and the possible lack of section 75 protection. Some of this is already required in the credit agreement, but could be made more explicit. The information might also be shown together as a whole in a separate section on credit card cheques. There should be cross reference to a more detailed description of the product, which could appear as part of the terms and conditions following the signature box.
- 6.13 Consideration should be given to requiring a prescribed statement (where applicable) that use of a credit card cheque may not benefit from section 75 protection. The regulations currently require reference to rights under section 75 as part of the prescribed forms of statement of protection and remedies under the Act, but these should be modified to take account of credit card cheques, with a separate statement in addition.
- 6.14 We agree that the consumer should be alerted clearly in the agreement to the fact that credit card cheques may be sent. This should be accompanied by an indication of any right of opt-out and how this may be exercised. However, we would question whether this is sufficient. As noted above, many consumers do not read credit agreements carefully and may fail to notice that they have a right to opt out of receiving credit card cheques. They may also not read any accompanying information and so may not be in a position to make an informed decision. Even if they are, the procedures for opting out may not be sufficiently clear and straightforward and may deter the consumer from taking advantage of the right.
- 6.15 As a minimum, we suggest that the agreement should be required to include an 'opt-out' box. This should highlight clearly the consumer's right to opt out of receiving cheques, with cross reference to a full description of the nature of the product and the costs involved. The consumer should be able to exercise the right merely by indicating this as part of the credit agreement. This might be by means of a tick box or similar. This should appear either just before or just after the main signature box, with sufficient prominence.

- 6.16 However, we would go further and suggest that the agreement should include a separate signature box (or 'form of consent') for credit card cheques. This would require the consumer positively to indicate consent to being sent cheques, rather than merely refraining from ticking an opt-out box. As above, there should be cross reference from the signature box to a description of the product and the costs etc, so that the consumer can make an informed decision.
- 6.17 This would be similar to the approach taken in relation to payment protection insurance (PPI) in the 2004 regulations. The agreement is required to include a separate 'form of consent' in cases where PPI or certain other insurance is financed by credit. The consumer must sign the form at the relevant point, and put a tick alongside each product they wish to purchase on credit. If this is not done, the insurance may not be included and it would be a breach of the regulations to do so. The form of consent must be set out in a prescribed manner and include cross reference to the relevant contract terms.
- 6.18 It is important that consumers are encouraged to focus on the issues, so that they can make an informed decision whether to receive credit card cheques and understand the implications. In our view, an opt-in box is the best way of achieving this, short of a statutory ban on sending credit card cheques unsolicited.

Information on cheques

- 6.19 We agree that regulations should be made under section 179 CCA, prescribing the inclusion of certain key information on credit card cheques themselves. In this way the consumer is alerted to the information at the point at which they are considering using the cheques. Otherwise information provided earlier may have been forgotten, or may not have been retained by the consumer. Even if retained, the consumer may not think of consulting the documents when deciding whether to write a cheque.

- 6.20 The regulations should also require information to be included on any cheque book or counterfoil. As a minimum this should include prominent cross reference to a description of the product and the associated costs etc appearing elsewhere, for example, as part of the credit agreement.
- 6.21 We consider that the vires exist for this under section 179. This enables regulations to be made as to the form and content of 'documents or things' issued by creditors under or in connection with regulated agreements. In our view this would extend to credit card cheques and any accompanying item or document. Such regulations may require specified information to be included in a prescribed manner, and include rules on prominence.
- 6.22 Because space is limited on credit card cheques, we suggest that key information be presented by means of prescribed warnings. This would be similar to the approach taken in respect of security statements in secured loan agreements and advertising. For example, 'paying by cheque will cost more than using a credit card and you may not have the same level of protection if things go wrong'. This might be accompanied by a brief cross reference to the credit agreement for further information. The regulations could also stipulate a minimum font size. In any event, the warning should be easily legible and readily distinguishable from the background medium.

Information accompanying cheques

- 6.23 As above, we consider that regulations under section 179 should also extend to any leaflet or other document accompanying each mailing of cheques. This would help focus the consumer's attention on the key information relating to costs and level of protection and could also be used as a reminder of any right of opt-out. This would be in addition to requirements regarding the cheques themselves and any cheque book or counterfoil, where space constraints may limit the information provided.

6.24 Section 179 enables regulations to prescribe that specified information is clearly brought to the attention of the debtor and that one part of a document is not given insufficient or excessive prominence compared with another. This might be used to require a separate leaflet, to accompany credit card cheques, in which all of the key information is shown together as a whole and with equal prominence. It could also be used to stipulate rules regarding relative prominence, so that key information is displayed no less prominently than other information in a document.

Monthly statements

6.25 Credit card cheques are often sent with a customer's monthly statement, but may also be sent at other times. In any event, we consider that certain information should be included as part of the monthly statement, as a periodic reminder and to reinforce other requirements. The consumer may be more likely to see information on a monthly statement and to retain the statement for a period thereafter.

6.26 The importance of information in monthly statements has been recognised by the Competition Commission (CC) in its provisional findings on remedies in relation to store cards. The CC is proposing that key information be included on the back of each statement, with a clear cross-reference to it from the front. The CC is also recommending rules governing ordering and prominence, with certain information being no less prominent than other information on the statement. The CC has suggested that this might incorporate a summary box approach.

6.27 Regulations under section 78(4) CCA may require information to be included in periodic statements showing the state of the account under a credit card agreement. This would include any interest or other charges incurred during the period. We suggest that the existing regulations should be reviewed, to ensure that such information is sufficiently clear and prominent in relation to credit card cheques. There should be a clear indication of the basis on which interest has been calculated and that this accrued from the date of the transaction with no interest grace

period. In addition, the statement should include explicit reference to the fact that the interest rate and charges applicable to credit card cheques differ from those applying to purchases using a credit card, where that is the case.

6.28 Consideration should also be given at some future stage to an expansion of section 78(4) so that the vires are capable of extending to additional information relating to credit card cheques and other product features. In the meantime we suggest that the industry should consider introducing additional measures, on a voluntary basis, to enhance transparency.

6.29 Q11 to 16 – see above comments.

7 TO BAN OR NOT TO BAN

- 7.1 As noted above, we consider that the credit agreement should include a signature box or other form of consent, which requires the consumer to indicate if they wish to receive credit card cheques.
- 7.2 The consultation paper suggests that the ability to use credit card cheques would be lost if consumers had to actively 'opt in' to receive them as they 'may frequently be unaware that they may find credit card cheques useful in the future and so may not choose to receive them'. This suggests that consumers are not at present given sufficiently clear information at the outset in order to make an informed decision and in particular are not aware of how credit card cheques work and the implications of using them. This reinforces the need for regulatory measures to improve the quality of information that consumers receive at the time of entering into the agreement.
- 7.3 It would be open to issuers to promote the advantages of using a credit card cheque, to encourage take-up. If such cheques are genuinely useful to consumers in certain circumstances and this is set out clearly and in a balanced manner, one would expect more consumers to opt to receive them. But they would be doing so from an informed basis and with a clear understanding of the product. The onus should be on the consumer to opt in to being sent credit card cheques, as a positive step taken in full knowledge of the consequences, rather than merely failing to tick an opt-out box (which they may not notice let alone understand).
- 7.4 The paper also notes that an 'opt-in' approach would have benefits for industry in terms of savings on printing and despatch costs. Given that large numbers of credit card cheques are issued but never used, it would be more cost effective for lenders to send out cheques only on request or when the consumer is nearing the end of an existing batch, as with normal bank cheques. We are unclear why some lenders continue to send cheques unsolicited even if the customer has never used any previously.

- 7.5 Whilst the receipt of an unsolicited cheque does not in itself compel the consumer to use it, they may be encouraged to do so without full knowledge of the consequences. They may also be encouraged to use cheques in inappropriate circumstances. In either case this may lead to consumer detriment. We believe therefore that it is appropriate to require an initial opt-in, via a signature or other form of consent in the credit agreement, coupled with an ongoing right of opt-out with periodic reminders.
- 7.6 In our view it is premature to rule out the option of a statutory ban on the unsolicited issue of credit card cheques, via an amendment of section 51 of the Consumer Credit Act. (We note that this is raised as one of the options in the RIA but not in the main consultation paper). Whether or not such a ban is merited would depend upon whether adequate measures are put in place to ensure proper transparency regarding the product (at all relevant stages) and whether these are found to work effectively. The DTI should therefore review the efficacy of any new regulations after a period of say 18 months, to assess their practical impact in safeguarding consumer interests.

8 OPTIONS

- 8.1 We do not believe that Option 1 is a justified position. The APACS guidelines and the subsequent changes to the Banking Code have been in place for some time, but have proved insufficient to tackle the problems identified in the consultation paper. This is evidenced by complaints and other information. In our view, self regulation is unlikely ever to be sufficient in this area. We therefore consider that regulation is necessary to deliver the further improvements in transparency and consumer protection that are required. We believe the risk in doing nothing is too high as it would leave consumers open to suffering significant levels of detriment through lack of knowledge of the product.
- 8.2 In our view, any regulations should be based on a combination of Options 2 and 3, but extended to include information in the credit agreement and in monthly statements. A package of measures is necessary, tailored to the different stages at which information may be needed by consumers and how best this may be delivered. This should include an opt-in box as part of the initial credit agreement, linked to a full and clear description of the product. Any regulations should also cover the form and manner in which information is disclosed including prominence.
- 8.3 We therefore strongly support Option 4, extended as above. If this does not prove adequate, consideration should be given to a statutory ban on sending credit card cheques unsolicited, as has been suggested by the TSC and various consumer organisations.
- 8.4 Q17 – see above comments.

9 REGULATORY IMPACT ASSESSMENT

- 9.1 We believe that the proposals set out above are consistent with the Government's emphasis on better regulation, as highlighted by the Hampton report and the proposals for implementation of the Unfair Commercial Practices Directive. Whilst self regulation has helped to promote consumer understanding of credit card cheques, it has not proved adequate to ensure effective transparency and to minimise the risk of detriment. More is needed to protect consumers, especially the more vulnerable.
- 9.2 Legislation can ensure that information is provided in a consistent and standardised format and at the times that consumers need it. It also allows for effective monitoring and enforcement, including under Part 8 of the Enterprise Act. We believe that our proposals for legislation are reasonable and proportionate to the problems identified. They seek to address gaps in the current regime, where there is scope for consumers to be misled through incomplete information or by omission or downgrading of key details. They thereby assist consumers to make informed decisions regarding take-up and usage of credit facilities.
- 9.3 In our view the changes proposed should not impose undue costs or burdens on business. Indeed, some lenders are doing much of this already, albeit in different ways and with varying success. Our proposals would formalise best practice and extend it to the whole of the credit card market. In this way consumers are encouraged to make appropriate use of credit card cheques and can avoid incurring unnecessary costs through lack of understanding of the product. It also helps to ensure fair competition and level playing fields.
- 9.4 Q18 to 22 – see above comments.